

# **BANKRUPTCY FEE COMPENDIUM III**

April, 2006

# **BANKRUPTCY FEE COMPENDIUM III**

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## Part A: In General.

1. **Purpose.** This *Bankruptcy Fee Compendium* discusses the fees collected by the bankruptcy clerks. It will guide bankruptcy clerks in collecting fees for filing bankruptcy cases, in filing certain proceedings within or related to bankruptcy cases, and in delivering services either by the clerk's office or under the clerk's supervision.
2. **Scope.** This information applies to all bankruptcy courts, to all bankruptcy operations in courts having consolidated bankruptcy and district court clerk's offices, and to all district courts exercising bankruptcy jurisdiction because the court either withdrew the reference or is entertaining a bankruptcy appeal. This information applies to all cases and to all proceedings in cases under title 11, United States Code, (the "Bankruptcy Code"). This information also applies to proceedings related to cases under title 11 when the bankruptcy court conducts those proceedings.
3. **Organization.** As far as practical, this *Compendium* organizes fee information by transaction. Historical information, such as legislative history, and parenthetical information, such as citations, are footnoted.
4. **Statutory Authority.**<sup>1</sup> The statutory authority for the initial filing fees is 28 U.S.C. § 1930(a). The Judicial Conference Schedule of Additional Fees for Bankruptcy Courts (Bankruptcy Court Miscellaneous Fee Schedule) prescribes fees for filing an adversary proceeding, filing a motion to reopen a case, filing chapter 15 petitions,<sup>2</sup> filing certain motions, and for certain services provided by the clerk.<sup>3</sup> The Bankruptcy Court Miscellaneous Fee Schedule is authorized by 28 U.S.C. § 1930(b).
5. **Previous Judicial Conference Action.** In 1988, 1989, and 1990, the Judicial Conference prescribed new fees for using the court's registry fund, for dividing a joint case filed under 11 U.S.C. § 302(a), for filing a motion to terminate, annul, modify, or condition the automatic stay, for filing a motion to compel abandonment of estate property, for filing a motion to withdraw the reference under 28 U.S.C. § 157(d), for docketing a cross appeal, and for electronic access to the courts' computer data.

**A. Amendments to Electronic Access Fees. Amendments to Electronic Access Fees.**  
The Judicial Conference modified the electronic access fee in March 1991, March

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<sup>1</sup>All statutory citations are to the Bankruptcy Code unless indicated otherwise.

<sup>2</sup>Formerly, ancillary petition under §304.

<sup>3</sup>The Bankruptcy Court Miscellaneous Fee Schedule applies also to cases filed under the Bankruptcy Act of 1898. (Congress empowered the Judicial Conference to prescribe similar fees under §§ 40c.(2), 40c.(3), 241, and 491 of the Act.)

1993 (eliminating the federal exemption), March 1995 (reducing the fee to \$.75 per minute), March 1996 (reducing the fee to \$.60 per minute), September 1998 (establishing the fee for Internet access at \$.07 per page); March 2001 (establishing fees for printing from public access terminal and for searches by PACER Service Center staff), March 2002 (establishing a per-document fee cap), September 2003 (establishing a national exemption policy, to be applied locally), September 2004 (raising the fee for Internet access to \$.08 per page), and September 2005 (establishing a separate fee for public access to transcripts of court proceedings<sup>4</sup>). These fees go into the Judiciary Information Technology Fund.

**B. Amendments in 1997.** In September 1997, the Judicial Conference modified the Bankruptcy Court Miscellaneous Fee Schedule substantially. The Conference doubled the fee to exemplify a document and modified the fee to amend a debtor's schedules. The Conference eliminated the 50 cents per notice fee and expanded the \$30 administrative fee to cover all cases filed under Title 11 (including involuntary cases and cases ancillary to foreign proceedings). The Conference repealed the \$5 notice of appeal fee for Act cases (but not Code cases), the claims processing fee, and the fee for bankruptcy court staff transcribing a record. The Conference modified the fees to docket an appeal and to docket a cross appeal to track the fee to file an appeal to the court of appeals. The Conference revised the fee to file a motion to lift stay, etc., replacing the dollar amount with a reference to one-half the amount of the civil action filing fee. The Conference modified the reopening fee, now new Item 9 on the Bankruptcy Court Miscellaneous Fee Schedule, to provide that the fee is for the motion to reopen and to include a provision for court waiver or deferral. These changes were effective January 1, 1998.<sup>5</sup>

**C. Amendments in 2000.** In November 2000, Congress enacted the Federal Courts Improvement Act of 2000, P.L. 106-518 (Nov. 13, 2000; 114 Stat. 2410) (the Act) which included provisions that affected the Bankruptcy Court Miscellaneous Fee Schedule. The Act both renumbered the schedule and authorized the judiciary to keep all increases to the charges and new charges effective following the effective date of the Act. The Judicial Conference implemented inflationary increases effective January 1, 2001 for seven of the charges.<sup>6</sup>

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<sup>4</sup> This fee has been established, but not yet implemented. See Preliminary Report of Proceedings, JCUS-SEP 05, pp.2-3.

<sup>5</sup>See Director's memorandum, November 24, 1997; Bankruptcy Court Administration Division's memorandum, December 16, 1997; Office of Finance and Budget memorandum, December 30, 1997.

<sup>6</sup>The seven charges increased were: Certification fee (Item 2) from \$5 to \$7; exemplifications (also Item 2) from \$10 to \$14; magnetic tape recordings (Item 3) from \$15 to \$20; records searches (Item 5) from \$15 to \$20; fee for filing or indexing papers (Item 7) from \$20 to \$30; microfilm/microfiche (Item 12) from \$3 to \$4; and returned check fee (Item 14) from \$25 to \$35.

- D. Amendments in 2001.** At its March 2001 session, the Judicial Conference approved two new services and related fees, approved two recommendations regarding EPA fees as applied to litigants and infrequent users, and endorsed creating a separate Fee Schedule for Electronic Public Access (EPA Fee Schedule).<sup>7</sup> The first new service and related fee was reducing the fee from 50 cents per page to 10 cents per page for printing copies from the public access terminals in the courthouse. The second was a \$20 fee for searches performed by the PACER Service Center. The first EPA fee recommendation the Conference approved permitted litigants one free electronic copy of all documents filed in a case if receiving that document is required by law or is directed by the filer. Second, the Conference approved a policy that no fee is due for accessing information from a judiciary Internet site until an individual account holder accrues charges of more than \$10 in a calendar year. Finally, the Conference approves a separate EPA Fee Schedule because, since fees pertaining to the EPA program cut across court lines, it believed having one EPA Fee Schedule apply to all federal courts would preserve consistency.
- E. Amendments in 2003.**<sup>8</sup> The Judicial Conference, at its September 2003 session, approved inflationary increases for 10 administrative charges,<sup>9</sup> increasing the fee for splitting a case from one-half to the full filing fee for filing a second separate original petition,<sup>10</sup> increasing the fees for motions to modify the automatic stay,<sup>11</sup> to compel abandonment of property,<sup>12</sup> and to withdraw the reference<sup>13</sup> from one-half to the full statutory filing fee to initiate a civil action,<sup>14</sup> and to increase the fees for docketing appeals and cross appeals from \$100 to \$250. These changes became effective November 1, 2003.
- F. Amendments in 2004.** At its March 2004 session, the Judicial Conference changed the preamble to the various Miscellaneous Fee Schedules applying to the Courts of

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<sup>7</sup>See Director's memorandum, April 30, 2001.

<sup>8</sup>See Director's letter dated October 2, 2003.

<sup>9</sup>The 10 charges increased were: Certification fee (Item 2) from \$7 to \$9; exemplifications (also Item 2) from \$14 to \$18; magnetic tape recordings (Item 3) from \$20 to \$26; amending scheduled (Item 4) from \$20 to \$26; records searches (Item 5) from \$20 to \$26; fee for filing or indexing papers (Item 7) from \$30 to \$39; misc. administrative fee due upon filing (Item 8) from \$30 to \$39; microfilm/microfiche (Item 12) from \$4 to \$5; record retrievals (Item 13) from \$35 to \$45; and returned check fee (Item 14) from \$35 to \$45.

<sup>10</sup>Under 28 U.S.C. § 1930.

<sup>11</sup>Under 11 U.S.C. § 362(a).

<sup>12</sup>Under Rule 6007(b) of the Federal Rules of Bankruptcy Procedure.

<sup>13</sup>Under 28 U.S.C. § 157(d).

<sup>14</sup>Under 28 U.S.C. § 1914(a).

Appeals, the District Courts, the Court of Federal Claims, the Bankruptcy Courts, and the Judicial Panel on Multidistrict Litigation clarifying that courts charge fees for all services they provide, including those for which litigants perform the initial task using the court's electronic systems. The previous language seemed to restrict charges to services performed directly by court personnel. The new language recognizes that the court's CM/ECF system changes the service model from the clerk performing initial tasks to the litigant performing initial tasks with the clerk performing related tasks such as system and equipment maintenance, quality control, case management, and case adjudication. The new language makes clear that courts charge fees for the bundle of services they perform.<sup>15</sup> At its September 2004 session, the Judicial Conference increased the PACER internet access fee from seven cents per page to eight cents effective January 1, 2005.<sup>16</sup> Finally, at its September 2004 session, the Judicial Conference increased the civil filing fee under 28 U.S.C. § 1914(a) from \$150 to \$250. The fee for filing certain contested proceedings, such as a lift stay proceeding, and adversary proceeding were linked to the civil filing fee and would have increased at the same time. Nevertheless, the Judicial Conference deleted the language linking the fees for filing certain contested proceedings to the fees for filing a civil action and deferred raising the adversary filing fee pending consideration by other Judicial Conference Committees.<sup>17</sup> Since no objections were raised, the adversary filing fee increased to \$250 effective September 20, 2005.<sup>18</sup>

- G. Amendments in 2005.** The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, as modified by FY 2005 Supp. Appropriations Act, Section 6058 of Pub. L. No. 109-3, 119 Stat. 231, (the Act) made four changes to the statutory fees effective October 17, 2005. The Act increased the filing fee for chapter 7 cases from \$155 to \$220,<sup>19</sup> it decreased the chapter 13 filing fee from \$155 to \$150, it increased the chapter 11 non-railroad filing fee from \$800 to \$1,000, and it increased the chapter 9 filing fee from \$800 to \$1,000.<sup>20</sup> The legislation also changed how the

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<sup>15</sup>See Director's letter dated May 3, 2004.

<sup>16</sup>See Director's memorandum dated October 21, 2004.

<sup>17</sup>G. Palman memorandum dated December 22, 2004.

<sup>18</sup>See Director's memorandum dated August 10, 2005, G. Palman memorandum dated December 22, 2004. .

<sup>19</sup>The original Act increased it to \$200, the supplemental legislation increased it to \$220.

<sup>20</sup>Under 28 U.S.C. § 1930(a)(2), the chapter 9 filing fee is equal to the filing fee for a chapter 11 non-railroad case.

fees are allocated among the judiciary, the U.S. Trustee program and the U.S. Treasury.<sup>21</sup> The Act also authorized *in forma pauperis* proceedings.

**H. Amendments in 2006.** Congress enacted the Deficit Reduction Act of 2005<sup>22</sup> (the “Act”) increasing certain filing fees. The Act increased the Court of Appeals filing fee from \$250 to \$450, the District Court civil action filing fee from \$250 to \$350, and several Bankruptcy Court filing fees.<sup>23</sup> The chapter 7 filing fee increased from \$220 to \$245, making the total fees due at filing \$299;<sup>24</sup> the chapter 13 filing fee increased from \$150 to \$235, making the total fees due at filing \$274; and the fee to convert a chapter 7 or chapter 13 case to a chapter 11 case decreased.<sup>25</sup> These fee changes took effect for all new cases filed on or after Sunday, April 9, 2006. The Act directed the courts deposit the incremental amounts collect into a special Treasury assessment fund<sup>26</sup> but made no changes to the amounts the courts deposited previously into the four existing funds (Judiciary, U.S. Trustee, Case Trustee, and Treasury).<sup>27</sup>

Although these fee increases would have increased some fees in the Bankruptcy Court Miscellaneous Fee Schedule which were linked to statutory filing fees,<sup>28</sup> at their March, 2006 session, the Judicial Conference stayed the increases in miscellaneous

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<sup>21</sup>Due to an error in the original Act, the Supplement Act reallocated these fees. See G. Palman memorandum dated May 13, 2005 and Director’s memorandum dated September 27, 2005. These allocations are discussed in Part B, section 5.

<sup>22</sup>Pub.L. 109-171.

<sup>23</sup>It looks like Congress also intended to increase chapter 11 filing fees from \$1,000 to \$2,750, which would raise the total fees due at filing to \$2,789. Nevertheless, a drafting error in the bill incorrectly references the statutory subsection prescribing the chapter 9 fee, rather than the chapter 11 fee. Consequently, neither the chapter 11 fee nor chapter 9 fee changed.

<sup>24</sup>The bankruptcy fee increases affect only the statutory chapter filing fees; all other fees collected at filing, such as the \$39 miscellaneous fee in all chapters and the \$15 trustee fee in chapter 7 cases, remain unchanged.

<sup>25</sup>“For converting, on request of the debtor, a case under chapter 7, or 13 of title 11, to a case under chapter 11 of title 11, the debtor shall pay to the clerk of the . . . court . . . a fee of the amount equal to the difference between the fee specified in paragraph (3) and the fee specified in paragraph . . . ” (a)(1)(A) and (a)(1)(B). 28 U.S.C. § 1930 (a).

<sup>26</sup>Filing fees, PL-109-171, Title X (Account 086400).

<sup>27</sup>See Director’s memorandum dated March 8, 2006, P. McKinney memorandum dated March 30, 2006.

<sup>28</sup>The miscellaneous fees that are potentially affected are: **Item 6** - the adversary filing fee, linked to the civil action filing fee; **Item 11** - the reopening fee, which is the same as the statutory filing fee for the chapter under which the debtor filed the case originally; **Item 15** - the fee for docketing an appeal, linked to the fee for filing an appeal in the Court of Appeals; **Item 19** - the fee for splitting a joint case, linked to the current filing fee for the chapter under which the debtor filed the case originally; and **Item 21** - the fee for docketing a cross appeal, linked to the fee for filing an appeal in the Court of Appeals. Additionally, if Congress increases the chapter 11 filing fee, **Item 16** - the chapter 15 filing fee would increase.



fees until the Court Administration and Case Management Committee and the Bankruptcy Committee reviewed these increases at their June 2006 meetings.

## **6. Listing of Fees Due.**

- A. Fees Due upon Filing.**<sup>29</sup> Two separate fees are due upon filing under all chapters of the U.S. Bankruptcy Code, and a third fee is due upon filing under chapter 7. All chapters have an initial filing fee and an administrative fee<sup>30</sup> due upon filing. Debtors filing under chapter 7 are responsible for a chapter 7 trustee surcharge in addition to the filing fee and the administrative fee.<sup>31</sup>
- B. Fees for Splitting Cases.**<sup>32</sup> When a debtor requests the court to split a joint case,<sup>33</sup> the clerk must collect a fee *usually*<sup>34</sup> equal to the filing fee for the chapter under which the joint case is pending as of the date the court splits the joint case.
- C. Fees for Converting Cases.**<sup>35</sup> When the court converts a case from one chapter to another, the clerk must collect a fee. The amount of the fee depends upon the chapter to which the case is converted.
- D. Procedure for Interdistrict Transfers.** No fee is due, but the clerk must employ procedures to transfer both funds and files between courts.

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<sup>29</sup>Exhibit 1 is 28 U.S.C. § 1930. Exhibit 2 is the Bankruptcy Court Miscellaneous Fee Schedule.

<sup>30</sup>The clerk charges an administrative fee in all cases under all chapters (including all chapter 15 petitions) filed on or after January 1, 1998.

<sup>31</sup>Items 8 and 9 of the Bankruptcy Court Miscellaneous Fee Schedule authorize the administrative fee and the chapter 7 trustee surcharge.

<sup>32</sup>Item 19 of the Bankruptcy Court Miscellaneous fee Schedule. Although the Deficit Reduction Act of 2005 increased the chapter 7 and chapter 13 filing fees, at its March session, the Judicial Conference decided to defer raising the fee to split, and others, until the Bankruptcy Committee and the Court Administration and Case Management Committee were able to review these fee increases. See Director's memorandum dated March 24, 2006. The Judicial Conference, at its September 2003 session, increased this fee from one-half to the full filing fee for filing a second separate original petition. This change became effective November 1, 2003. See Director's memorandum dated October 2, 2003.

<sup>33</sup>Filed under § 302 of title 11.

<sup>34</sup>Although the Deficit Reduction Act of 2005 increased the chapter 7 and 13 filing fees, at its March session, the Judicial Conference decided to defer raising the fee due upon splitting a case, and others, until the Bankruptcy Committee and the Court Administration and Case Management Committee were able to review these fee increases. See Director's memorandum dated March 24, 2006.

<sup>35</sup>Item 10 of the Bankruptcy Court Miscellaneous Fee Schedule and 28 U.S.C. § 1930(a) (for conversions to chapter 11).

- E. Fees for Miscellaneous Contested Proceedings.** Currently, this fee is **\$150**.<sup>36</sup>
- F. Fees for Filing Adversary Proceedings.**<sup>37</sup> The clerk must collect a fee *usually*<sup>38</sup> equal to the fee for filing a civil action in district court.<sup>39</sup> Currently, the fee is **\$250.00**.
- G. Fees for Filing Appeals.**<sup>40</sup> The clerk must collect a notice of appeal fee of **\$5.00** and docketing fee of **\$250.00**.
- H. Fees for Dismissals.** No additional fee is due from the debtor, but the trustee appointed to service the case still is entitled to the usual statutory compensation.
- I. Fees for Reopening Cases.**<sup>41</sup> The clerk must collect a fee *usually*<sup>42</sup> equal to the filing fee for the chapter under which the case was pending as of the date the party files the request. The Judicial Conference has provided exceptions to the fee, and the court may either waive or defer the reopening fee for good cause.

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<sup>36</sup>Although once linked to the district court civil action fee, at its September 2005 session, the Judicial Conference increased the civil filing fee under 28 U.S.C. § 1914(a) from \$150 to \$250 and amended the fee for filing a motion to lift the automatic stay so that the fee would remain at \$150. See the Judicial Conference's Memorandum of Action dated December 16, 2004, G. Palman memorandum dated December 22, 2004. The Judicial Conference, at its September 2003 session, increased this fee from one-half to the full filing fee for filing a civil action effective November 1, 2003. See Director's memorandum dated October 2, 2003. The Judicial Conference previously modified this fee effective January 1, 1998 from \$60 to one-half of the filing fee for filing a civil action.

<sup>37</sup>Item 6 of the Bankruptcy Court Miscellaneous Fee Schedule.

<sup>38</sup>Although the Deficit Reduction Act of 2005 increased the district court civil action fee, at its March session the Judicial Conference decided to defer raising the adversary proceedings filing fee, and others, until the Bankruptcy Committee and the Court Administration and Case Management Committee were able to review these fee increases. See Director's memorandum dated March 24, 2006 and P. McKenney memorandum dated March 30, 2006.

<sup>39</sup>28 U.S.C. § 1914(a) prescribes the filing fee in civil actions.

<sup>40</sup>28 U.S.C. § 1930(c) prescribes fees for filing a notice of appeal. Item 15 of the Bankruptcy Court Miscellaneous Fee Schedule prescribes an appellate docketing fee. Item 21 of the Bankruptcy Court Miscellaneous Fee Schedule prescribes an appellate docketing fee for cross-appeals. Although the Deficit Reduction Act of 2005 increased the appellate docketing fee, at its March session, the Judicial Conference decided to defer raising the bankruptcy docketing fee, and others, until the Bankruptcy Committee and the Court Administration and Case Management Committee were able to review these fee increases. See Director's memorandum dated March 24, 2006 and P. McKenney memorandum dated March 30, 2006.

<sup>41</sup>Item 11 of the Bankruptcy Court Miscellaneous Fee Schedule and Fed. R. Bankr. P. 4007(b).

<sup>42</sup>Although the Deficit Reduction Act of 2005 increased the chapter 7 and chapter 13 filing fee, at its March session, the Judicial Conference decided to defer raising the reopening fee, and others, until the Bankruptcy Committee and the Court Administration and Case Management Committee were able to review these fee increases. See Director's memorandum dated March 24, 2006 and P. McKenney memorandum dated March 30, 2006.

- J. Miscellaneous Administrative Fees.** These fees include fees for copying, certifications, reproducing audio recordings, amendments to schedules, record searches, indexing papers, microfilm, retrieving documents from offsite storage, return checks, printing local rules, handling the registry of funds, and electronic access.
- (1) **Services Provided by Persons or Facilities Outside the Court.** Section 156(c), title 28, United States Code, authorizes the clerk to use persons or facilities outside of the court to provide services the clerk would perform otherwise. Section 156(c) also authorizes each circuit's judicial council to issue guidelines for using outside services.<sup>43</sup>
- (2) **Noticing by Someone Other Than the Clerk.** Federal Rules of Bankruptcy Procedure 2002(a), (b), (d), (f), (k), and (o) permit the court to direct a person other than the clerk to send the notices required under the Rules.<sup>44</sup> Moreover, Congress has prohibited the Administrative Office or the courts from restricting the noticing function to the staff of the clerk's office.<sup>45</sup>
- K. Electronic Public Access Fees.** The PACER Service Center must charge 60 cents per minute for electronic access to the court's data via dial up service;<sup>46</sup> eight cents per page for public users obtaining information through the federal judiciary Internet site,<sup>47</sup> with the total for any document (excluding transcripts of court proceedings) not to exceed the fees for thirty pages; and \$20 for every search of court records conducted by the PACER Service Center. The clerk must charge ten cents per page for printing copies of any record or document accessed electronically at a public terminal in the courthouse.
- L. Fees in Bankruptcy Act Cases.**<sup>48</sup> Congress codified filing fees for cases under the former Bankruptcy Act of 1898, ("Act"), §§ 40c.(1), 48c., 52a., 77(a), 85(c), 132, 324, 424(2), and 624(2) of the Act.

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<sup>43</sup>Exhibit 13 is section 156(c) implementation guidelines issued by the Judicial Conference for adoption by the judicial councils of each circuit.

<sup>44</sup>Exhibit 12 is the Judicial Conference Noticing Guidelines.

<sup>45</sup>Section 403 of Pub.L.No. 101-162, 103 Stat. 1013, Judiciary Appropriations Act of 1990.

<sup>46</sup>The Judicial Conference modified the electronic access fee in March 1991, March 1993 (eliminating the federal exemption), March 1995 (reducing the fee to \$.75 per minute), and March 1996 (reducing the fee to \$.60 per minute).

<sup>47</sup>The Judicial Conference increased this fee effective January 1, 2005 from seven cents to eight cents at its September 21, 2004 session.

<sup>48</sup>Exhibit 4 is the schedule of filing fees for Bankruptcy Act cases.

7. **Exceptions to the Fee.** With the exception of *in forma pauperis* proceedings, neither Congress nor the Judicial Conference has authorized exceptions to the fees due upon filing the original request for relief. The Judicial Conference has authorized some exceptions to the fees due upon filing adversary proceedings and to the fees due for some of the services listed in the Bankruptcy Court Miscellaneous Fee Schedule. The Conference has exempted bankruptcy administrators from all the fees listed on the Bankruptcy Court Miscellaneous Fee Schedule, and has exempted the United States trustee from some of those fees.

A. **Limited Exception for Services Rendered on Behalf of the United States.** The exemption for the United States<sup>49</sup> is in the Judicial Conference's language in the preamble to the fee schedule. No fees are due for services rendered on behalf of the United States or to bankruptcy administrators.<sup>50</sup> Additionally, the exemption applies to United States trustees except when serving as the case trustee.

(1) **No Exemption for Electronic Access Services.** Effective October 1, 1993, the Judicial Conference eliminated the exemption for federal agencies from fees for using electronic access services. Nevertheless, those federal agencies that receive funding from judiciary appropriations, such as bankruptcy administrators, still enjoy the exemption.

(2) **No Exemption for Copy Services Where Electronic Access Is Available.** To both mitigate the pressure on clerks' office operations that could result from eliminating the exemption from fees, and to encourage federal agencies to use either remote terminals or the public access terminals in clerks' offices to access the files electronically,<sup>51</sup> the Judicial Conference authorized the clerk to collect fees from federal agencies for copying court records, and for performing searches where electronic access is available.

B. **Limited Exemptions for Case Trustees.** Although trustees are subject to all fees, such as for photocopying, searches, and certifications, limited exemptions or waivers are available for some of the fees.

(1) **Motions to Convert.** For the benefit of a trustee, the court may defer or waive the fee for filing a motion to convert the case.

(2) **Adversary Complaints.** For the benefit of a trustee, the court may defer or waive the fee for filing a complaint.

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<sup>49</sup>Any executive branch agency is considered the United States for this purpose and qualifies for the exemption.

<sup>50</sup>Appointed under Pub.L.No. 99-554, § 302(d)(3)(I).

<sup>51</sup>See Director's memorandum, July 1, 1993 and the following discussion of copy, search, and electronic access fees. For a more complete discussion of which entities are "the United States" for purposes of an exemption from fees, see "Adversary Proceedings Initiated by United States."

- (3) **Reopening Fees.** The court may waive the reopening fee under appropriate circumstances or may defer payment of the fee from trustees pending recovery of additional assets. If the reopening fee is deferred pending recovery of assets, the fee shall be waived if no assets are recovered.
  - (4) **Electronic Access Fee.** In courts where the electronic access fee is applicable, the court may grant an exemption, where necessary, to avoid unreasonable burdens and to promote public access. Nevertheless, the courts grant exceptions cautiously.<sup>52</sup>
  - (5) **Reimbursement from the Estate.** With court approval,<sup>53</sup> the estate may reimburse a chapter 7 or chapter 11 trustee for actual and necessary expenses of administration such as photocopying and certification fees. If a chapter 13 debtor has begun making plan payments, the standing trustee should have funds on hand to pay the fees prescribed by the Bankruptcy Court Miscellaneous Fee Schedule.
8. **Waivers Must Be Authorized.** Bankruptcy fees apply to everyone, including the United States and all trustees, unless specifically exempted. Nevertheless, the court may allow the debtor to pay some fees in installments.<sup>54</sup>
9. **Prohibition Against Refunding Filing Fees.** The Judicial Conference prohibits refunding the fees due upon filing. The Conference prohibits the clerk from refunding these fees even if the party filed the case in error, and even if the court dismisses the case or proceeding.<sup>55</sup> Nevertheless, the clerk must refund any fee collected without authority. For example, the clerk has no authority to collect a fee to reopen a case unless the case is closed. Consequently, the clerk must refund a fee to reopen if the parties discover later that the case was open.
- A. **Refunding Fees Paid Electronically.**<sup>56</sup> The courts administered the policy prohibiting refunds easily in the paper environment but, with CM/ECF and electronic payments, administering the no refund policy became difficult.

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<sup>52</sup>As noted in Appendix I to Exhibit 2 (Bankruptcy Court Miscellaneous Fee Schedule). Director's memorandum, July 1, 1993.

<sup>53</sup>11 U.S.C. § 330(a).

<sup>54</sup>See following discussion at Part A, ¶ 9 and Part B, ¶ 3.

<sup>55</sup>JCUS-SEP 49, p. 202; JCUS-SEP 48, p. 30-31.

<sup>56</sup>Director's memorandum, July 29, 2005.

- (1) **Develop Local Procedures.** Although the Judicial Conference still prohibits refunds generally, judges, in conjunction with their clerks, may develop procedures addressing CM/ECF refunds.
- (2) **Delegated Judicial Determination.** The authority to approve refunds is a judicial determination, but judges may delegate this determination to the clerk if the court's procedures address clearly the type of refund the clerk may approve.
- (3) **Requested by Motion.** Parties may request refunds by motion, governed by either local rules or standing orders.
- (4) **Correcting Erroneous Filings.** If the court discovers an erroneous filing for which no fee has been paid, the court may correct the filing and simply collect no fee.
- (5) **Process Refunds Electronically.** Courts must process refunds through the electronic credit card system; courts should issue refunds by check only if the debtor paid by check the fee the court is refunding.
- (6) **Sanctions.** Should a particular attorney or law firm err repeatedly, the court may consider remedial action such as issuing a show cause order to show why it should consider further requests for refunds.

10. **Installment Payments.**<sup>57</sup> Either an individual filing a voluntary individual case, or a husband and wife filing a voluntary joint case may pay the filing fees in installments.<sup>58</sup> The "filing fees" in this context include any fee payable to the clerk at the time the debtor files the petition,<sup>59</sup> and include the traditional filing fee, the miscellaneous administrative fee, and, in chapter 7 cases, the chapter 7 trustee surcharge. Nevertheless, no installments are permitted in involuntary cases.

11. ***In Forma Pauperis.*** Effective October 17, 2005, the Bankruptcy Reform Act of 2005<sup>60</sup> authorizes the court to waive the filing fee for individual chapter 7 debtors whose income is less than 150% of the official poverty line as defined by the Office of Management and Budget.<sup>61</sup> Should the court deny the application, the clerk must track and collect outstanding

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<sup>57</sup>See discussion at Part B, ¶ 3.

<sup>58</sup>28 U.S.C. § 1930(a). The Bankruptcy Court Miscellaneous Fee Schedule also permits fees due upon filing to be paid in installments. JCUS-MAR 94, p. 6

<sup>59</sup>Either under § 1930(a) or under the Bankruptcy Court Miscellaneous Fee Schedule. Fed. R. Bankr. P. 1006(a).

<sup>60</sup>The Bankruptcy Abuse and Consumer Protection Act of 2005 (Public Law 109-8) changed pre-existing law, Section 1930(a) of title 28, United States Code, to permit filing bankruptcy petitions *in forma pauperis*.

<sup>61</sup>The Judicial Conference published interim procedures for processing *in forma pauperis* relief. Those procedures are reproduced as Exhibit 6.

fees and, if necessary, issue notices of intent to dismiss.<sup>62</sup> The court, if it waives the original filing fee, may waive all the other bankruptcy court fees for that chapter 7 individual debtor. Although certain parties are exempted from these fees, the circuits disagree whether 28 U.S.C. § 1915(a) authorized *in forma pauperis* adversary proceeding complaints and appeals for parties other than individual chapter 7 debtors.

12. **Procedure When the Fee Fails to Accompany the Filing.** The clerk may accept petitions and designate them as “received,” “accepted,” or “lodged for filing,” but has no authority to designate them as “filed” unless the debtor files an application for *in forma pauperis* status or to pay the fee in installments along with the petition.
13. **Accounting.** The clerk allocates the fees they collect in bankruptcy cases among the U.S. Treasury, the United States Trustee System, and the Judiciary.
  - A. **United States Trustee System Fund.** Section 589a of title 28, United States Code, establishes a special fund in the United States Treasury known as the United States Trustee System Fund. This fund finances the United States trustee system. Except for chapter 9 bankruptcies and chapter 15 cases, the clerk credits this fund with a portion of the filing fee from cases filed in those judicial districts supported by the United States Trustee System.
    - (1) **Quarterly Fees in Chapter 11 Cases.** The United States Trustee credits this fund with both quarterly fees paid by chapter 11 debtors<sup>63</sup> and all excess compensation received by chapter 12 and chapter 13 standing trustees. Chapter 11 trustees and debtors in possession deposit the fees directly to the United States Trustee System Fund. The clerk plays no role in collecting these fees in U.S. trustee districts.
    - (2) **Bankruptcy Administrator States.** Since the judicial districts in Alabama and North Carolina are exempt from the United States Trustee System, the clerk credits those filing fees that would have gone to the United States Trustee System Fund<sup>64</sup> instead to the general receipts of the Treasury.<sup>65</sup> The clerk also credits the general receipts’ fund those fees otherwise due a United States trustee for serving as a case trustee.<sup>66</sup>

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<sup>62</sup>G. Palman memorandum dated May 4, 2005.

<sup>63</sup>28 U.S.C. § 1930(a)(6).

<sup>64</sup>Under 28 U.S.C. § 589a.

<sup>65</sup>Section 302(d)(3)(G), Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub.L.No. 99-554, 100 Stat. 3119, enacted October 27, 1986.

<sup>66</sup>Under 11 U.S.C. § 330(d).

(3) **Accounting Treatment.**<sup>67</sup> The clerk must treat these fees as offsetting collections to the appropriation “United States Trustee System Fund.”<sup>68</sup> (**Credit fund 5073XX**).

**B. Special Fund for the Judiciary.**<sup>69</sup> Section 1931 of title 28, United States Code, establishes a special fund in the Treasury to offset funds appropriated for the operation and maintenance of the United States courts.<sup>70</sup> The Appropriations Act of 1994<sup>71</sup> requires the clerk to credit this special fund with a portion of the filing fee.

**C. PL 109-171 Fund.** Congress enacted the Deficit Reduction Act of 2005<sup>72</sup> (the “Act”) increasing the chapter 7 filing fee from \$220 to \$245, making the total fees due at filing \$299;<sup>73</sup> the chapter 13 filing fee from \$150 to \$235, making the total fees due at filing \$274; and decreasing the fee to convert a chapter 7 or chapter 13 case to a chapter 11 case.<sup>74</sup> These fee changes took effect for all new cases filed on or after Sunday, April 9, 2006.<sup>75</sup> The Act directed the courts deposit the incremental amounts collect into a special Treasury assessment fund<sup>76</sup> (Account **086400**) but made no

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<sup>67</sup>The Department of Justice Appropriations Act, title I of Pub. L. No. 104-208, contained a general provision that changed the classification of fees creditable to the United States Trustee System Fund prescribed originally under 28 U.S.C. § 589a(a) and (b).

<sup>68</sup>Office of Finance and Budget Memorandum, November 22, 1996.

<sup>69</sup>Section 3302 of title 33 requires a custodian to deposit all public moneys in the Treasury unless a specific statutory exemption applies.

<sup>70</sup>Section 406(b) of Pub.L.No. 101-162, the Judiciary Appropriations Act of 1990, as amended by section 111, Pub.L.No. 103-121.

<sup>71</sup>Pub.L.No. 103-121, § 111, (October 27, 1993); Pub.L.No. 101-162, § 406(b), (November 21, 1989).

<sup>72</sup>Pub.L. 109-171.

<sup>73</sup>The bankruptcy fee increases affect only the statutory chapter filing fees; all other fees collected at filing, such as the \$39 miscellaneous fee in all chapters and the \$15 trustee fee in chapter 7 cases, remain unchanged.

<sup>74</sup>“For converting, on request of the debtor, a case under chapter 7, or 13 of title 11, to a case under chapter 11 of title 11, the debtor shall pay to the clerk of the . . . court . . . a fee of the amount equal to the difference between the fee specified in paragraph (3) and the fee specified in paragraph . . . ” (a)(1)(A) and (a)(1)(B). 28 U.S.C. § 1930 (a).

<sup>75</sup>It looks like Congress intended to increase chapter 11 filing fees as well, from \$1,000 to \$2,750, which would raise the total fees due at filing to \$2,789. Nevertheless, a drafting error in the bill incorrectly references the statutory subsection prescribing the chapter 9 fee, rather than the chapter 11 fee. Consequently, neither the chapter 11 fee nor the chapter 9 fee changed.

<sup>76</sup>Filing fees, PL-109-171, Title X. See P. McKinney memorandum dated March 30, 2006.



changes to the amounts the courts deposited previously into the four existing funds (Judiciary, U.S. Trustee, Case Trustee, and Treasury).<sup>77</sup>

## Part B: Fees for Initial Filings

### 1. Fees Due.<sup>78</sup>

#### A. Summary of Fees Due upon Filing.

**Table B-1. Filing Fees by Chapter**

Chapter	Filing Fee	Administrative Fee	Chapter 7 Surcharge	Total Fee Due Upon Filing
Chapter 7	\$245	\$39	\$15	<b>\$299</b>
Chapter 9	\$1,000	\$39	-0-	<b>\$1,039</b>
Chapter 11 (non railroad) <sup>79</sup>	\$1,000	\$39	-0-	<b>\$1,039</b>
Chapter 11 (railroad)	\$1,000	\$39	-0-	<b>\$1,039</b>
Chapter 12	\$200	\$39	-0-	<b>\$239</b>
Chapter 13	\$235	\$39	-0-	<b>\$274</b>
Chapter 15	\$1,000	\$39	-0-	<b>\$1,039</b>

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<sup>77</sup>See Director's memorandum dated March 8, 2006, P. McKinney memorandum dated March 30, 2006.

<sup>78</sup>Exhibit 5 catalogues the filing fees and miscellaneous fees collected at the time of filing under all chapters, and catalogues the allocation of those fees among the Treasury funds.

<sup>79</sup>As defined by 11 U.S.C. § 101.

- B. Filing Fees.** Under 28 U.S.C. § 1930(a), the clerk<sup>80</sup> must collect the filing fees<sup>81</sup> identified in the first column of the preceding chart.
- C. Miscellaneous Administrative Fee.**<sup>82</sup> In all cases filed under Title 11 and in all chapter 15 cases,<sup>83</sup> the clerk must collect from the petitioner<sup>84</sup> a miscellaneous administrative fee of **\$39**. Although this fee is not a filing fee, the petitioner must pay it when he or she files the petition.
- (1) **Due Only with New Cases.** Since reopening, consolidating, converting to another chapter, and splitting joint cases involve existing cases, no administrative fee is due.
- (2) **Trustees May Move for Reimbursement.** Even though the petitioner paid the administrative fee upon filing, a case trustee, a contractor acting on the trustee's behalf, or other person directed by the court to provide notices under Federal Rule of Bankruptcy Procedure 2002(a) may seek from the estate reimbursement for the costs of noticing.<sup>85</sup>

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<sup>80</sup>Defined in Fed. R. Bankr. P. 9001(3) as the bankruptcy clerk, if one has been appointed, otherwise, clerk of the district court.

<sup>81</sup>Exhibit 5 catalogues the filing fees and miscellaneous fees collected at the time of filing under all chapters and catalogues the allocation of those fees among the Treasury funds.

<sup>82</sup>Pursuant to Item 8 of the Bankruptcy Court Miscellaneous Fee Schedule. In December 1992, the Judicial Conference approved the collection of a miscellaneous administrative fee of \$30 in all chapter 7 and chapter 13 cases in lieu of charging noticing fees. Effective January 1, 1998, the Conference expanded this fee to all cases filed under Title 11. The Judicial Conference, at its September 2003 session, increased this fee from \$30 to \$39 effective November 1, 2003. See Director's memorandum, October 2, 2003.

<sup>83</sup>In September 1992, the Judicial Conference amended the Bankruptcy Court Miscellaneous Fee Schedule substituting in chapter 7 and 13 cases the administrative fee due upon filing for the notice fees. (Director's memorandum, November 4, 1992.) Effective January 1, 1998, the Judicial Conference eliminated the 50 cents per notice fee altogether by expanding the miscellaneous administrative fee to all chapters of title 11, and to filings under 11 U.S.C. § 304, which permits filing cases ancillary to a foreign proceeding. Therefore, the clerk will no longer charge the 50 cents per notice fee after January 1, 1998 in either pending or future cases. Nevertheless, if the notice fee was incurred prior to January 1, 1998, the clerk must collect it even if the collection takes place after January 1, 1998.

<sup>84</sup>Initially, the schedule specified that the clerk would collect the fee from the debtor. The schedule has been modified to include the word petitioner; therefore, the clerk must now collect the \$39 administrative fee from creditors filing an involuntary case against the debtor.

<sup>85</sup>Bankruptcy Judges Division letter, November 20, 1992.

- D. Chapter 7 Trustee Surcharge.**<sup>86</sup> In chapter 7 cases, the clerk must collect<sup>87</sup> a **\$15** fee from the petitioner to pay the chapter 7 trustee<sup>88</sup> in addition to the filing fee prescribed under 28 U.S.C. § 1930(a)(1)(A) (currently **\$245**) and the administrative fee (**\$39**) for a total of **\$299** in fees due upon filing.
- (1) **Accounting.** To satisfy 11 U.S.C. § 330, the clerk must hold the fee in the deposit fund (**6855TT**) until paid to the trustee.<sup>89</sup>
- (2) **Due for All Cases Closed.** If collected, the **\$15** is payable to trustees in all chapter 7 cases closed on or after October 22, 1995, regardless of when those cases were filed.<sup>90</sup>
- E. Chapter 15 Petitions.**<sup>91</sup> For chapter 15 petitions, the clerk must collect **\$1,000**.<sup>92</sup> Additionally, the clerk must collect the \$39 administrative fee.<sup>93</sup>
- F. Fees in Involuntary Cases.** Filing fees<sup>94</sup> are the same for both voluntary and involuntary petitions. The clerk must collect the administrative fee (in all chapters), and the chapter 7 trustee surcharge (in chapter 7) from the petitioner in an involuntary case.<sup>95</sup>
- (1) **Petitioners in Involuntary Cases Are Ineligible for Installment Payments.** Petitioners in involuntary cases must pay the fees due upon filing immediately upon submitting the petition.

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<sup>86</sup>At its March 1995 session, the Judicial Conference approved a **\$15** trustee surcharge as part of the Bankruptcy Court Miscellaneous Fee Schedule. This surcharge funds the **\$15** increase in compensation of chapter 7 trustees (from **\$45** to **\$60** per case) provided by the Bankruptcy Reform Act of 1994, Pub.L.No. 103-394, section 117. The fee, effective October 22, 1995, applies to any chapter 7 case filed on or after that date.

<sup>87</sup>Pursuant to Item 9 of the Bankruptcy Court Miscellaneous Fee Schedule, for cases filed on or after October 22, 1995.

<sup>88</sup>Serving in cases as provided in 11 U.S.C. § 330(b)(2).

<sup>89</sup>Director's memorandum, July 19, 1995.

<sup>90</sup>Director's memorandum, September 13, 1995.

<sup>91</sup>Formerly petitions ancillary to a foreign proceeding under 11 U.S.C. § 304.

<sup>92</sup>Pursuant to Item 16 of the Bankruptcy Court Miscellaneous Fee Schedule.

<sup>93</sup>See ¶C above.

<sup>94</sup>28 U.S.C. § 1930(a).

<sup>95</sup>See Bankruptcy Court Miscellaneous Fee Schedule, Items 8, 8.1.

- G. Joint Petitions.** The clerk must collect only one filing fee when debtors file a joint petition.
- (1) Eligibility.**<sup>96</sup> Only an individual and that individual's spouse may file a joint petition.
  - (2) Two Filing Fees for Serial Filings by Husbands and Wives.** When an individual debtor first files a petition and then that debtor's spouse files a second petition, the debtors may not amend or convert the original filing retroactively to a joint filing.
    - (a)** The second filing spouse must pay a second filing fee. Filing the first case created an order for relief as of the date of filing. To permit a second petitioning spouse to join the original petition later could impermissibly compromise the rights of parties in interest in the second spouse's case.
    - (b)** Nevertheless, the court may order the trustee or debtor in possession to jointly administer the two separately docketed cases.
- 2. Refunding Fee Prohibited.** The Judicial Conference generally prohibits refunding fees due upon filing. The Conference generally prohibits the clerk from refunding these fees even if the party filed the case in error and even if the court dismisses the case.
- A. In Forma Pauperis Chapter 7 Proceedings.** Effective October 17, 2005, the Bankruptcy Reform Act of 2005<sup>97</sup> authorized the court to waive the filing fee for individual chapter 7 debtors whose income is less than 150% of the official poverty line as defined by the Office of Management and Budget.<sup>98</sup> Should the court deny the application, the clerk must track and collect outstanding fees or, if necessary, issue notices of intent to dismiss.<sup>99</sup> The court, at its discretion, may waive all the other bankruptcy court fees for that chapter 7 individual debtors if it waives the original filing fee. Although certain parties are exempted from these fees, the circuits disagree whether 28 U.S.C. § 1915(a) authorized *in forma pauperis* adversary proceeding complaints and appeals for parties other than individual chapter 7 debtors.

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<sup>96</sup>11 U.S.C. § 302(a).

<sup>97</sup>The Bankruptcy Abuse and Consumer Protection Act of 2005 (Public Law 109-8) changed pre-existing law, Section 1930(a) of title 28, United States Code, to permit filing bankruptcy petitions *in forma pauperis*.

<sup>98</sup>The Judicial Conference published interim procedures for processing *in forma pauperis* relief. Those procedures are reproduced as Exhibit 6.

<sup>99</sup>G. Palman memorandum dated May 4, 2005.

- B. *In Forma Pauperis* Petitions in Non-Chapter 7 Cases.** Section 1930(a) of title 28, United States Code, prohibits filing bankruptcy petitions *in forma pauperis*. This provision codifies the decision of the Supreme Court in *In re Kras*, 409 U.S. 434 (1973).<sup>100</sup>
- C. Refunding Fees Paid Electronically.**<sup>101</sup> The courts administered the Judicial Conference’s policy prohibiting refunds easily in the paper environment, but, with CM/ECF and electronic payments, administering the no refund policy became difficult.
- (1) Develop Local Procedures.** Although the Judicial Conference still prohibits refunds generally, judges, in conjunction with their clerks, may develop procedures addressing CM/ECF refunds.
  - (2) Delegated Judicial Determination.** The authority to approve refunds is a judicial determination, but judges may delegate this determination to the clerk if the court’s procedures address clearly the type of refund the clerk may approve.
  - (3) Requested by Motion.** Parties may request refunds by motion that may be governed by either local rules or standing orders.
  - (4) Correcting Erroneous Filings.** If the court discovers an erroneous filing<sup>102</sup> for which no fee has been paid, the court may correct the filing and simply collect no fee.
  - (5) Refunds Processed Electronically.** Courts must process refunds through the electronic credit card system; courts should issue no refunds by check.
  - (6) Sanctions.** Should a particular attorney or law firm err repeatedly, the court may consider remedial action such as issuing a show cause order to show why it should consider further requests for refunds.

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<sup>100</sup>In October 1993 Congress enacted legislation directing the Judicial Conference to conduct a three-year study on the effect of waiving filing fees in chapter 7 bankruptcy cases for individual debtors who are unable to pay the filing fee in installments. The legislation required a fee waiver program be implemented and studied in “not more than six districts,” for a period of three years beginning October 1, 1994. The program operated in the bankruptcy courts of Illinois-Southern, Montana, New York-Eastern, Pennsylvania-Eastern, Tennessee-Western, and Utah. The program sunset on September 30, 1997.

<sup>101</sup>Director’s memorandum, July 29, 2005.

<sup>102</sup>Usually, through its QA procedures.

3. **Payments in Installments.** Eligible debtors may move <sup>103</sup> for leave to pay the fees due upon filing in installments. Nevertheless, petitioners filing involuntary cases are ineligible for installment payments.
- A. **Eligibility and Maximum Number of Payments.** Only voluntary individual debtors are eligible to pay the filing fee, the administrative fee, and the chapter 7 trustee surcharge (in a chapter 7 case) in installments.<sup>104</sup>
- (1) **Number of Installments Permitted.** The debtors must pay the fees due upon filing in four or fewer installments and must pay the final installment within 120 days of filing unless the court, for cause, extends that time. Even if the court extends that time, the debtors must pay the fees due upon filing in full within 180 days of the date they file the petition.<sup>105</sup>
- (2) **Lump Sum Payments.** Debtors may make a "deferred payment" in one installment prior to the discharge provided their proposed payment date falls within the time allowed by Federal Rule of Bankruptcy Procedure 1006(b)(2).<sup>106</sup> The debtors must indicate the date they will make payment in their application.
- (3) **Application of the Installment Payments.**<sup>107</sup> The clerk must allocate amounts received among all funds *pro rata*.<sup>108</sup>

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<sup>103</sup>28 U.S.C. § 1930(a), Fed. R. Bankr. P. 1006. Exhibit 7 is the Application and Order to Pay Filing Fee in Installments (form B3).

<sup>104</sup>28 U.S.C. § 1930(a).

<sup>105</sup>Fed. R. Bankr. P. 1006(a), (b)(2).

<sup>106</sup>General Counsel memorandum, July 24, 1987.

<sup>107</sup>Exhibit 8 discusses the application of installment payments and fund transfers upon default.

<sup>108</sup>Before the Federal Courts improvement Act of 2000, P.L. 106-518 (Nov. 13, 2000; 114 Stat. 2410) (the Act), the clerk applied the first \$30 received under an installment payment plan to the \$30 (now \$39) miscellaneous administrative fee. The clerk prioritized the miscellaneous administrative fee because these revenues were treated as a reimbursement to the Judiciary's appropriation. Once the payments satisfied the administrative fee, the clerk allocated the remaining payments between the filing fee and the chapter 7 trustee surcharge *pro rata*. The Act initially was interpreted as changing this treatment by requiring the clerk to allocate the payments received among the filing fees and the chapter 7 trustee *pro rata*. The Act was reinterpreted effective October 8, 2003 to apply the first \$15 collected to the chapter 7 trustee surcharge. See Director's memorandum, October 8, 2003. In light of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 and 2003 amendments to section (b) of Bankruptcy Rule 1017, the allocation priority was again reinterpreted effective October 17, 2005 eliminating the priority formerly given the \$15 trustee fee. See General Counsel memorandum dated October 6, 2005 and G. Schafer memorandum dated October 14, 2005.

- (4) **Petitioners in Involuntary Cases Are Ineligible for Installment Payments.** Petitioners in involuntary cases must pay the fees due upon filing immediately upon submitting the petition.

**B. Procedure.** The debtors must file a motion.

- (1) **Requirements of the Motion.** The debtors must prepare their application as prescribed by the appropriate form<sup>109</sup> and must state the debtors are unable to pay the fee except in installments.<sup>110</sup>
- (2) **Both Spouses Must Sign the Application.** In a joint case, both spouses must sign the application.
- (3) **The Court Must Act Before the Meeting of Creditors.** The court must act on the application before the § 341 meeting of creditors.<sup>111</sup>

**C. Chapter 13 Cases.** The chapter 13 trustee may pay the filing fees from moneys remitted to the trustee by the debtor under a proposed plan. The chapter 13 trustee may pay the fees due upon filing from this money provided, first, the court authorized installment payments and, second, the court receives full payment within the time provided by Rule 1006(b)(2).<sup>112</sup> The debtor must pay the filing fees in full before either the debtor or the chapter 13 trustee may pay an attorney or anyone else rendering services to the debtor.<sup>113</sup> Additionally, the debtor must make provisions to pay in full those fees and all installments required either by statute or by the plan before the court may confirm a plan in either chapter 12 or chapter 13 cases.<sup>114</sup>

**D. Penalty for Non-Payment.** Permission to pay the fees due upon filing in installments fails to abate the debtor's obligation to pay the fees in full. The court may grant no discharge in a chapter 7 case if the debtor has failed to pay either the filing fee or any

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<sup>109</sup>The application must conform substantially to Official Form 3A, which also contains a proposed order for approving the application. Exhibit 7 is a copy of Form 3A, Application and Order to Pay Filing Fee in Installments.

<sup>110</sup>Interim Rule 1006(b)(1). The rule previously required the debtors to proposed terms of the installments and to state they paid no attorney for services related to the case, but the rule was amended in 2005 to incorporate the official form, which required the proposed installments and to eliminate the requirement that the debtors pay no attorney as a condition to approving installment payments. Although no longer a condition to approving installment payments, the debtor may make no further payments to attorneys until the fees due upon filing are paid in full.

<sup>111</sup>Fed. R. Bankr. P. 1006(b)(2).

<sup>112</sup>General Counsel memorandum, May 7, 1985.

<sup>113</sup>Fed. R. Bankr. P. 1006(b)(3).

<sup>114</sup>11 U.S.C. §§ 1225(a)(2), 1325(a)(2).

other fees due upon filing the case.<sup>115</sup> Fees payable upon filing include the filing fee, the administrative fee, and the chapter 7 trustee surcharge.

- (1) **Dismissals.** If the court dismisses a case before the due date of the last installment payment, the debtor still must pay the fees due upon filing in full. If the court dismisses a case before the debtor pays all fees due upon filing, the court may include a statement that fees are owing in its order of dismissal. The order also may include a statement that the court will decline to entertain a motion to reconsider the dismissal unless the debtor pays the balance of all fees due when the motion is made. The order allowing payment of the fees in installments, and a statement from the clerk of court addressing the status of payments would support the court's finding that fees are due.<sup>116</sup>
- (2) **Refiling Prohibited for 180 days.** No individual or family farmer may be a debtor under any chapter within 180 days after dismissal if the court dismissed the case due to the debtor's willful failure either to comply with the court's orders or to appear before the court in proper prosecution of the case.<sup>117</sup> An order to pay the filing fee in installments may be such a court order and, if the debtor has missed an installment, the debtor may be in violation of that order. Consequently, if a debtor with unpaid fees files another case within 180 days, the clerk of court may bring the debtor's default before the court for a hearing to show cause why the new case should not be dismissed.
- (3) **Refiling After 180 Days.** If a debtor with unpaid fees files a new case after 180 days pass, the bankruptcy clerk should bring the unpaid fees to the attention of the court, and the court may consider the debtor's default in deciding whether to allow the debtor again to pay the filing fee in installments.
- (4) **The Court's Claim in a Subsequent Bankruptcy.** Once the debtor with unpaid fees files a new petition, the clerk must stop all action to collect the unpaid fees; the court is merely an unsecured creditor in the new case.<sup>118</sup> Nevertheless, the clerk may have no authority to file a proof of claim in the new case. Only the Department of Justice has authority to represent the United

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<sup>115</sup>Fed. R. Bankr. P. 4004(c)(1)(f).

<sup>116</sup>In 1991 General Counsel's Office issued an opinion that seemed to indicate that dismissal may be the only penalty for non-payment of filing fees. J. Chastain memorandum, July 11, 1991. Nevertheless, General Counsel's Office, the Bankruptcy Judges Division, and the Accounting and Financial Systems Division later reached a consensus that the debtor remained liable for filing and other fees after dismissal. See R. Avery memorandum, May 11, 2004.

<sup>117</sup>Section 109(g)(1).

<sup>118</sup>Some courts interpret 11 U.S.C. § 707(a)(2) as authorizing dismissal if the debtor fails to pay this claim.



States in litigation,<sup>119</sup> and whether filing a proof of claim rises to litigation or remains a ministerial collection action is open to interpretation. Clerks should confer with their district's United States Attorney, and they should coordinate their efforts to assert the court's claim with that office.

- (5) **Federal Claims Collections.** The clerk must establish procedures to collect unpaid fees. The Office of General Counsel and the Accounting and Financial Systems Division advises that the Federal Claims Collection Act, as amended by the Debt Collection Improvement Act of 1996,<sup>120</sup> provides direction for establishing these procedures.
  - (6) **Clerk's Duty of Due Diligence.** An agency must make a "diligent effort" to collect a debt before the debt may be written off, compromised, or referred to the Department of Justice for litigation. The "diligence" required depends on such factors as the amount of the debt, the likelihood of collection, and cost of the collection efforts.<sup>121</sup>
  - (7) **Notation in Order of Dismissal.** The court may include a statement that the fees are due in the order of dismissal. That statement would be a first attempt to collect the fees. Depending on the amount of the fees, the clerk must decide whether to follow up in 30 days with a letter to the debtor. If the debtor fails to file a new case within 180 days, and fails to respond to either the order of dismissal or the follow up letter, if one is sent, the clerk reasonably may write off the debt. The clerk must refer debts outstanding beyond 180 days to the Treasury Department for collection under the Treasury Offset program.
4. **Procedure When the Fee Fails to Accompany the Petition.** The prescribed fees must accompany the petition unless the debtor files an application to either proceed *in forma pauperis* or pay the fees in installments.<sup>122</sup> If the debtor submits a petition with neither the fees nor an application to proceed *in forma pauperis* or pay the fees in installments, the clerk may accept the papers but designate them as "received," "accepted," or "lodged for filing." The clerk avoids violating his or her duty to collect a fee upon the "filing" of the petition by

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<sup>119</sup>28 U.S.C. § 516 restricts conducting litigation to the Department of Justice.

<sup>120</sup>Before the GAO Act of 1996, 31 U.S.C. § 3701, *et seq.*, the GAO and the Department of Justice shared responsibility for setting debt collection standards for federal agencies. In 1996, that Act relieved the GAO of its responsibility to issue these standards. The Debt Collection Improvement Act then designated the Department of the Treasury to share this responsibility with the Department of Justice. In December 2000 the GAO removed the Federal Claims Collections Standards that were published at 4 C.F.R. Parts 101-105, and the Department of the Treasury and the Department of Justice issued new standards at 31 C.F.R. 900-904. Debt collection procedures addressing the disbursing officer's offset authority under DCIA can be found at 31 C.F.R. 285.

<sup>121</sup>General Counsel memorandum, July 11, 1991.

<sup>122</sup>Fed. R. Bankr. P. 1006(a).

declining to designate the petition as "filed" until either the debtor pays the fees or the court enters an order allowing installment payments. Although the clerk declines to process the petition until the debtor resolves the fee deficiency, the clerk does create a record of the date the court received the petition. The parties may contest the significance of the court receiving the petition on that date, but the clerk altered none of the debtor's rights either by failing to accept the document, or by failing to note the date on which it was brought to the clerk's office.

## 5. Accounting.

**A. Generally.** The Deficit Reduction Act of 2006 added \$25 to the chapter 7 filing fee and directed the courts to deposit that \$25 surcharge into a special treasury fund (**PL 109-171 fund, 086400**<sup>123</sup>).<sup>124</sup>

- (1) **Funds Credited to United States Trustee System Fund.** The clerk must deposit a portion of the filing fee generated by cases filed under chapter 7, 11, 12, or 13, in a judicial district covered by the United States trustee system, to the United States Trustee System Fund<sup>125</sup> (**Credit fund 5073XX**) as follows:

**Table B-2. Filing Fees Credited to the U.S. Trustee System**

	Filing Fee	Portion to Fund after Allocating \$25 to PL 109- 171 Fund	Amount
Chapters 7	\$ 220	40.46 percent	\$ 89.01
Chapter 11 (non railroad)	\$1,000	55.00 percent	\$550.00
Chapter 11 (railroad)	\$1,000	50.00 percent	\$500.00

<sup>123</sup>See P. McKinney memorandum dated March 30, 2006.

<sup>124</sup>Congress gave the PL 109-171 fund no priority upon distribution. Congress gave the PL 109-171 fund no priority upon distribution. Consequently, upon a partial payment, the distribution is the ratio of the partial payment collected over the total fee, times each party's total share. For example, if the clerk collects \$100 of a total fee of \$299, then the case trustee would receive (100/299) times \$60 = \$20.06. Note that, because the preceding calculation considers the PL 109-171 charge, the percentages resulting from this *pro-rata* fee calculation are inconsistent with the percentages in 28 U.S.C §§ 589a and 1931. Although the Deficit Reduction Act of 2006 increased the filing fee and directed the courts deposit the increase into a special Treasury fund, it neglected to adjust the 28 U.S.C §§ 589a and 1931 percentages.

<sup>125</sup>28 U.S.C. § 589a(b)(1)-(4).

Chapter 12	\$ 200	50.00 percent	\$100.00
Chapter 13	\$ 150	28.33 percent	\$ 42.50
Chapter 9	\$1,000	-0-	-0-

- (2) **Bankruptcy Administrator Districts.** In the judicial districts in Alabama and North Carolina, the clerk must deposit the United States trustee's portion of the fee to the general receipts of the Treasury.<sup>126</sup> **(Credit fund 086900).**
- (3) **Funds Credited to the Special Fund for the Judiciary.** The clerk must deposit a portion of the filing fee from chapters 7, 13 and 11 cases to the special fund for the judiciary.<sup>127</sup> This fund offsets the judiciary's appropriations for operating the federal courts. **(Credit fund 510000).** The amount of the credit is as follows:

**Table B-3. Filing Fees Credited to the Judiciary**<sup>128</sup>

	Filing Fee	Portion to Fund 510000 before Allocating \$25 to PL 109-171 Fund	Amount
Chapters 7	\$ 220	28.87 percent	\$ 63.51
Chapter 13	\$ 150	35.00 percent	\$ 52.50
Chapter 11 Non-Railroad	\$1,000	25.0 percent	\$250.00

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<sup>126</sup>Section 302(d)(3)(G), Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub.L.No. 99-554, 100 Stat. 3119, enacted October 27, 1986.

<sup>127</sup>Established under 28 U.S.C. § 1931.

<sup>128</sup>See note to 28 U.S.C. § 1931. Congress gave the PL 109-171 fund no priority upon distribution. Consequently, upon a partial payment, the distribution is the ratio of the partial payment collected over the total fee, times each party's total share. For example, if the clerk collects \$100 of a total fee of \$299, then the case trustee would receive (100/299) times \$60 = \$20.06. Note that, because the preceding calculation considers the PL 109-171 charge, the percentages resulting from this *pro-rata* fee calculation are inconsistent with the percentages in 28 U.S.C §§ 589a and 1931. Although the Deficit Reduction Act of 2006 increased the filing fee and directed the courts deposit the increase into a special Treasury fund, it neglected to adjust the 28 U.S.C §§ 589a and 1931 percentages.

Chapter 9	\$1,000	The amount of the fee exceeding \$300.00 <sup>129</sup>	\$700.00
Chapter 11 (Railroad),	\$1,000	-0-	-0-
Chapter 12	\$ 200	-0-	-0-

- (4) **Cases in Which the Judiciary Receives No Portion of the Fee.** The judiciary receives no portion of the filing fee from chapter 11 railroad cases, or chapter 12 family farmer cases.

**B. Chapter 7 Cases.**

- (1) **Filing Fee - \$245.00 (28 U.S.C. § 1930(a)).**

Deposit Fund	\$45.00	11 U.S.C. § 330(b)(1)	6855TT
General Fund	22.48	31 U.S.C. § 3302(b) <sup>130</sup>	086900
PL 109-171 Fund	25.00	Pub. L. 109-171 <sup>131</sup>	086400
Special Fund for the Judiciary	63.51	28 U.S.C. § 1931 (Note)	510000
Special Fund for the U.S. Trustee	89.01	28 U.S.C. § 589a.	5073XX

- (2) **Administrative Fee - \$39 (28 U.S.C. § 1930(b)(8)).**

Special Fund for the Judiciary	\$39.00	PL 101-162 § 404(a) PL 106-518 (Nov. 13, 2000, 114 Stat. 2410)	510000
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- (3) **Trustee Surcharge - \$15.00.**

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<sup>129</sup>28 U.S.C. § 1930(a)(2).

<sup>130</sup>33 U.S.C. § 3302 of title 33 requires a custodian to deposit all public moneys in the Treasury unless a specific statutory exemption applies.

<sup>131</sup>See P. McKinney memorandum dated March 30, 2006.

Deposit Fund	\$15.00	11 U.S.C. § 330(b)(2)	6855TT
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- (a) **Cases Filed on or After October 22, 1995.** For cases filed on or after October 22, 1995, the clerk must deposit the chapter 7 trustee surcharge to fund 6855TT.

**C. Chapter 9 Municipal Debt.**

- (1) **Filing Fee - \$1,000.00 (28 U.S.C. § 1930(a)(2)).**

General Fund	\$300.00	31 U.S.C. § 3302(b)	086900
Special Fund for the Judiciary	\$700.00	28 U.S.C. § 1930(a)(2)	510000

- (2) **Administrative Fee - \$39 (28 U.S.C. § 1930(b)(8)).**

Special Fund for the Judiciary	\$39.00	PL 101-162 § 404(a) PL 106-518 (Nov. 13, 2000, 114 Stat. 2410)	510000
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**D. Chapter 11 (Non-Railroad).**

- (1) **Filing Fee (Non-Railroad) - \$1,000.00 (28 U.S.C. § 1930(a)(3)).**

General Fund	\$200.00	31 U.S.C. § 3302(b)	086900
Special Fund for the Judiciary	250.00	28 U.S.C. § 1930(a)(3)	510000
Special Fund for the U.S. Trustee	550.00	28 U.S.C. § 589a.	5073XX

- (2) **Administrative Fee - \$39 (28 U.S.C. § 1930(b)(8)).**

Special Fund for the Judiciary	\$39.00	PL 101-162 § 404(a) PL 106-518 (Nov. 13, 2000, 114 Stat. 2410)	510000
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**E. Chapter 11 (Railroad).**

**(1) Filing Fee (Railroad) - \$1,000.**

General Fund	\$500.00	31 U.S.C. § 3302(b)	086900
Special Fund for the U.S. Trustee	500.00	28 U.S.C. § 589a.	5073XX

**(2) Administrative Fee - \$39 (28 U.S.C. § 1930(b)(8)).**

Special Fund for the Judiciary	\$39.00	PL 101-162 § 404(a) PL 106-518 (Nov. 13, 2000, 114 Stat. 2410)	510000
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**F. Chapter 12 (Family Farmer).**

**(1) Filing Fee - \$200.00 (28 U.S.C. § 1930(a)(5)).**

General Fund	\$100.00	31 U.S.C. § 3302(b)	086900
Special Fund for the U.S. Trustee	100.00	28 U.S.C. § 589a.	5073XX

**(2) Administrative Fee - \$39 (28 U.S.C. § 1930(b)(8)).**

Special Fund for the Judiciary	\$39.00	PL 101-162 § 404(a) PL 106-518 (Nov. 13, 2000, 114 Stat. 2410)	510000
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**G. Chapter 13 (Wage Earner).**

**(1) Filing Fee - \$235.00 (28 U.S.C. § 1930(a)(1)).**

General Fund	\$ 55.00	31 U.S.C. § 3302(b)	086900
PL 109-171 Fund	85.00	Pub. L. 109-171 <sup>132</sup>	086400

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<sup>132</sup>See P. McKinney memorandum dated March 30, 2006.

Special Fund for the Judiciary	52.50	PL 101-162, PL 103-121	510000
Special Fund for the U.S. Trustee	42.50	28 U.S.C. § 589a.	5073XX

(2) **Administrative Fee - \$39 (28 U.S.C. § 1930(b)(8)).**

Special Fund for the Judiciary	\$39.00	PL 101-162 § 404(a) PL 106-518 (Nov. 13, 2000, 114 Stat. 2410)	510000
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**H. General Questions Regarding Payments to Chapter 7 Trustees.**

- (1) **General Rule.** Chapter 7 trustees will receive \$60 when the trustee completes his or her services.<sup>133</sup> In chapter 7 cases, the clerk must credit \$45 of the filing fee and the \$15 chapter 7 trustee surcharge to the trustee deposit fund, and hold these funds to pay the chapter 7 trustee.<sup>134</sup>

- (a) **Installment Payment Defaults and *In Forma Pauperis* Proceedings.** The clerk may pay the trustee only to the extent the clerk collects the filing fee.<sup>135</sup> Consequently, if the clerk collects less than the full filing fee, the trustee will receive only a *pro rata* portion of the funds collected.<sup>136</sup> If the court permits the debtor to proceed *in forma pauperis*, the clerk collects nothing and is able to pay the trustee nothing.

- (b) **When a Trustee's Service Is Completed.**<sup>137</sup> The clerk may pay the chapter 7 trustee:

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<sup>133</sup>11 U.S.C. § 330(b).

<sup>134</sup>11 U.S.C. § 330(b).

<sup>135</sup>This is a change from pre-October 17, 2005 policy. Directors memorandum, October 5, 2005, General Counsel's memorandum, October 6, 2005.

<sup>136</sup>Bankruptcy Rule 1017(b)(2).

<sup>137</sup>Memorandum of Understanding between the Executive Office for United States Trustees and the Administrative Office of the United States Courts Regarding Case Closings and Post Confirmation Chapter 11 Monitoring dated January 1999.

- 1) **In an Asset Case.** When the time has expired to object to the Final Account, Certification That the Estate Has Been Fully Administered, and Application for Discharge of Trustee.<sup>138</sup>
  - 2) **In a No Asset Case.** When the time has expired to object to both the “Final Account, Certification That the Estate Has Been Fully Administered, and Application for Discharge of Trustee,”<sup>139</sup> and to the debtor’s discharge.<sup>140</sup>
- (2) **Cases Filed Before October 22, 1995.** The trustee in these cases will receive \$45 (or the lesser amount received from the petitioner from the filing fee) from the trustee deposit fund **6855TT**, and \$15 from the **6855UF** fund. The debtors paid no surcharge prescribed under Item 9 in these cases, and fund **6855UF** tracks the deficiency.
- (3) **Cases Filed on and After October 22, 1995.** The trustee in these cases will receive \$45 (or the lesser amount actually received from the petitioner) from the filing fee, and \$15 from the chapter 7 trustee surcharge.<sup>141</sup> The clerk will charge fund **6855TT**.
- (a) **Postings to Specific Case Ledger.** The clerk must post both the \$15 from the surcharge, and the \$45 from the filing fee to the specific case’s trustee ledger records, and then must pay the trustee when the trustee completes his or her services. Connecting the collection of the chapter 7 trustee surcharge and the filing fee to a specific case, however, fails to reserve those funds for that specific case. Connecting those collections to a specific case is merely an accounting control to track collections and expenditures.
- (b) **Reporting.** The clerk reports receipts to and disbursements from fund **6855TT** on **AO 274**. The clerk reflects receipts and disbursements of both the \$45 from the filing fee, and the \$15 from the chapter 7 trustee surcharge in the balances reported on quarterly **AO 183** reports.
- (4) **In Converted Chapter 7 Cases.** The clerk will pay the trustee’s \$60 fee by transferring \$45 from the general fund, **fund 086900**, (credited with the filing fee under the original chapter) to **fund 6855TT**. Additionally, the clerk will transfer \$15 generated by the fee collected with the motion to convert or with

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<sup>138</sup>Under F.R.Bankr.P. 5009.

<sup>139</sup>Under F.R.Bankr.P. 5009.

<sup>140</sup>Under F.R.Bankr.P. 4004(a).

<sup>141</sup>Item 9 of the Bankruptcy Court Miscellaneous Fee Schedule.



the notice of conversion<sup>142</sup> from **fund 6855BK** to **6855TT**. These two transfers provide the full \$60 for payment to the trustee.

- (a) The Judicial Conference left the previous instructions for paying the \$45 trustee fee unchanged with the implementing the \$15 chapter 7 trustee surcharge.<sup>143</sup>
  - (b) **Funds 6855UF (Unfunded Disbursements) and 6855BK (Receipts)** were created to track disbursements and receipts of fees generated by the \$15 trustee surcharge<sup>144</sup> credited to **fund 6855TT** and by the \$15 fee for a motion to convert or for a notice of conversion to chapter 7<sup>145</sup> credited to fund **6855BK**.<sup>146</sup>
- (5) **If No Trustee Is Appointed.** In cases in which no trustee is appointed, the clerk must transfer the \$45 fee from **fund 6855TT** to **fund 086900**, but the clerk must transfer the \$15 chapter 7 trustee surcharge from **fund 6855TT** to **fund 6855BK**.
- (6) **If Multiple Trustees Serve.** When more than one trustee serves in a chapter 7 case, the court may apportion the \$60<sup>147</sup> among them as it finds appropriate.<sup>148</sup> Multiple trustees may serve for many reasons, for example: creditors may elect a trustee replacing the interim trustee, the original trustee may become unable to serve and resign, the court may convert and reconvert the case, or the parties may transfer the case. (**Credit fund 6855TT**).

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<sup>142</sup>Item 10 of the Bankruptcy Court Miscellaneous Fee Schedule.

<sup>143</sup>See Guide to Judiciary Policies and Procedures, Vol. 1, Ch. 7, pp. 33 and 391.

<sup>144</sup>9 of the Bankruptcy Court Miscellaneous Fee Schedule.

<sup>145</sup>10 of the Bankruptcy Court Miscellaneous Fee Schedule.

<sup>146</sup>Director's memorandum, October 11, 1995.

<sup>147</sup>Pre-October 17, 2005 the judiciary interpreted 11 U.S.C. 330(b)(2) as requiring the \$15 portion of the trustee to be paid to each trustee in full. Current policy is for the trustees to ask the court to allocate the entire \$60 fee between or among them.

<sup>148</sup>See 11 U.S.C. §§ 326(c) and 703(c).

- (7) **Split Cases.** When a debtor moves the court to split a joint case,<sup>149</sup> the clerk must charge a fee *usually*<sup>150</sup> equal to the current filing fee for the chapter under which the joint case is pending<sup>151</sup> and must deposit the fee to **fund 510000**. The fee is due when the court grants the motion.
- (a) **Splitting Chapter 7 Cases.** When a joint chapter 7 case splits, the clerk must pay the second trustee by transferring \$45 from **fund 510000** to **fund 6855TT**. Since the clerk has no authority to collect the \$15 portion of the chapter 7 trustee's fee when the court splits the case, the clerk has no authority to payout the \$15 portion of the chapter 7 trustee's fee. The second chapter 7 trustee will receive only \$45. The clerk will post the \$60 for the original trustee and the \$45 for the second trustee both to the individual trustee ledger and to the Treasury control account for **fund 6855TT**. The clerk will reflect the transfer on the **form AO283** or its equivalent.
- (b) **Splitting Cases Other Than Chapter 7.** When cases split in a non-chapter 7 cases then convert to chapter 7, the clerk will collect a fee to split and then a fee to convert. Consequently, unlike splitting chapter 7 cases described above, the clerk will collect the \$15 chapter 7 surcharge. So, when the second chapter 7 trustee completes his or her services, the clerk will transfer 45 from **fund 510000** and \$15 from **fund 6855BK** to pay him or her the full \$60. The clerk will post the \$60 (for each trustee) both to the individual trustee ledgers, and to the Treasury control account for **fund 6855TT**. The clerk will reflect the adjustment on **form AO283** or its equivalent.
- (8) **Sua Sponte Conversions.** If the court converts a chapter 12 or chapter 13 case *sua sponte* (on its own motion), the clerk will collect no \$15 chapter 7 trustee surcharge, and so will pay the chapter 7 trustee only \$45.<sup>152</sup> The clerk will

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<sup>149</sup>Filed under 11 U.S.C. § 302.

<sup>150</sup>Although the Deficit Reduction Act of 2005 increased the chapter 7 and chapter 13 filing fees, at its March session, the Judicial Conference decided to defer raising the fee to split, and others, until the Bankruptcy Committee and the Court Administration and Case Management Committee were able to review these fee increases. See Director's memorandum dated March 24, 2006.

<sup>151</sup>The Judicial Conference, at its September 2003 session, increased this fee from one-half to the full filing fee for filing a second separate original petition effective November 1, 2003. See Director's memorandum, October 2, 2003.

<sup>152</sup>Before October 17, 2005, the clerk paid the trustee the \$15 chapter 7 trustee surcharge from monies the clerk collected with motions and notices to convert to chapter 7 (Item 10 of the Bankruptcy Court Miscellaneous Fee Schedule). Current policy authorizes no payment to the chapter 7 trustee unless collected with the filing fee. Director's memorandum, October 5, 2005; General Counsel's memorandum, October 7, 2005. Since the clerk has no authority to collect the \$15 portion of the fee upon a *sui sponte* conversion, clerks have no authority to pay out this portion of the fee upon a *sui sponte* conversion. This policy applies only to *sui sponte* conversions, with all

transfer \$45 from fund **086900** to **6855TT**. Use **form AO283** to document the transfer.

- (9) **United States Trustee Serving As the Chapter 7 Trustee.** When the United States trustee serves as a trustee in a case, the clerk deposits the compensation due for the United States trustee's services as trustee to the United States Trustee System Fund. **(Credit fund 5073XX.)**
- (a) **For Cases Filed Before October 22, 1995.** The clerk will transfer \$15 from **fund 6855UF** to **fund 5073XX**, the United States Trustee System Fund, after the case is closed.
- (b) **For Case Filed on or After October 22, 1995.** The clerk will transfer \$15 from **6855TT** to **5073XX**, the United States Trustee System Fund, after the case is closed.<sup>153</sup>
- (c) **Accounting Procedure.** If the United States trustee is due both the \$15 trustee surcharge,<sup>154</sup> and the \$45 trustee fee generated by the chapter 7 filing fee,<sup>155</sup> the clerk must use form **AO283** to transfer the fees from the trustee deposit fund (**fund 6855TT**) to the United States Trustee System Fund (**fund 5073XX**).<sup>156</sup> The clerk prepares no **TR4** trustee payment voucher.
- (10) **Reopened Cases.** Although petitioners must pay *usually*<sup>157</sup> equal to the current statutory filing fee when moving to reopen a case, they are under no obligation to pay charges due upon filing imposed by Bankruptcy Court Miscellaneous Fee Schedule. Since the \$15 portion of a chapter 7 trustee's fee is a Miscellaneous

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other conversions the movant pays the \$15 conversion fee upon filing the motion.

<sup>153</sup>11 U.S.C. § 330(d).

<sup>154</sup>11 U.S.C. § 330(b)(2).

<sup>155</sup>11 U.S.C. § 330(b)(1).

<sup>156</sup>See 11 U.S.C. § 330(d).

<sup>157</sup>Although the Deficit Reduction Act of 2005 increased the chapter 7 and chapter 13 filing fees, at its March session, the Judicial Conference decided to defer raising the fee to reopen, and others, until the Bankruptcy Committee and the Court Administration and Case Management Committee were able to review these fee increases. See Director's memorandum dated March 24, 2006.

Fee Schedule item,<sup>158</sup> the movant is under no obligation to pay it when moving the court to reopen a chapter 7 case.<sup>159</sup>

- (11) **Installment Payment Defaults.** In a chapter 7 case filed after October 22, 1995 in which the debtor defaults before completing the installments, the case trustee will receive the prorated portion of the filing fee and the chapter 7 trustee surcharge the clerk credited to the **6855TT** account.<sup>160</sup>
- (12) ***In Forma Pauperis* Cases.** Current policy permits paying chapter 7 trustees only to the extent the clerk collects their fee upon filing. Consequently, the clerk pays nothing to chapter 7 trustees in *in forma pauperis* cases.

#### **I. General Questions Regarding Collecting the Chapter 7 Trustee Surcharge.**

- (1) **Joint Cases.** Only one \$15 chapter 7 surcharge is due with joint cases filed on or after October 22, 1995.
- (2) **Splits.** No additional \$15 trustee surcharge is due when a chapter 7 joint case splits.
- (3) **Involuntary Cases.** The \$15 trustee surcharge is due from the petitioners in an involuntary case.
- (4) **Reopened Cases.** No \$15 chapter 7 trustee surcharge is due when a case is reopened.<sup>161</sup>

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<sup>158</sup>Item 11 of the Bankruptcy Court Miscellaneous Fee Schedule.

<sup>159</sup>Previously, if the court appointed a trustee in a reopened chapter 7 case, clerks paid the \$15 portion of the trustee's fee from a reserve account (The clerk paid the trustee the \$15 surcharge from the funds the clerk collected with motions and notices to convert to chapter 7 by transferring \$15 from fund **6855BK** to fund **6855TT**). Current policy, however, permits paying a chapter 7 trustee fee only to the extent that fee is collected upon filing. Consequently, the clerks may no longer pay the \$15 portion of a chapter 7 trustee's fee in a reopened case. If a chapter 7 trustee appointed in a reopened case is to receive this \$15, item 11 of the Miscellaneous Fee Schedule should be amended to add \$15 to the chapter 7 reopening fee. Since the chapter 7 trustees are only appointed in reopened cases for cause, this fee, if applied in re-openings, may contribute to the judiciary's general revenues.

<sup>160</sup>Exhibit 8 is an example.

<sup>161</sup>Item 11 of the Bankruptcy Court Miscellaneous Fee Schedule. With some exceptions, the only fee due when a petitioner files a motion to reopen is a new "filing fee" prescribed by 28 U.S.C. § 1930(a) for filing a new case in effect on the date the petitioner files the motion to reopen. Nevertheless, although the Deficit Reduction Act of 2005 increased the chapter 7 and chapter 13 filing fees, at its March session, the Judicial Conference decided to defer raising the fee to reopen, and others, until the Bankruptcy Committee and the Court Administration and Case Management Committee were able to review these fee increases. See Director's memorandum dated March 24, 2006.

## Part C. Fee upon Splitting Cases<sup>162</sup>

1. **The Fee Due.** When a debtor moves the court to split a joint case,<sup>163</sup> the clerk must charge a fee *usually*<sup>164</sup> equal to the current filing fee for the chapter under which the joint case is pending.<sup>165</sup> The fee is due when the debtor files the motion.

### A. Amount of the Fee.

- (1) **Chapter 7 Cases.** Although the current filing fee is **\$245**, the fee to split the case is **\$220**.
- (2) **Chapter 13 Cases.** Although the current filing fee is **\$235**, the fee to split the case is **\$150**.
- (3) **Chapter 12 Cases.** The current filing fee is **\$200**.
- (4) **Chapter 11 Cases.** The current filing fee is **\$1,000**.

- B. **Consolidated Cases Distinguished.** The fee for splitting cases under item 19 of the Bankruptcy Court Miscellaneous Fee Schedule applies only to husband and wife cases filed jointly. Occasionally, two or more estates that were filed separately, with each paying its own filing fee, are consolidated into one proceeding. These consolidated cases require judicial action,<sup>166</sup> and, although called consolidated, the majority of these cases are jointly administered, rather than actually consolidated. Since consolidated cases are excluded from item 19 of the Bankruptcy Court Miscellaneous Fee Schedule, if these cases are subsequently deconsolidated, no fee is due.

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<sup>162</sup>The Bankruptcy Court Miscellaneous Fee Schedule originally referred to the fee for splitting a joint case filed under section 302(a) of the Code as a "deconsolidation" fee. To ease confusion concerning application of the fee, on February 14-15, 1990 the Executive Committee of the Judicial Conference changed the denomination of the fee. Director's memorandum, February 26, 1990.

<sup>163</sup>Filed under 11 U.S.C. § 302.

<sup>164</sup>Although the deficit Reduction Act of 2005 increased the chapter 7 and 13 filing fees, at its March session, the Judicial Conference decided to defer raising the fee due upon splitting a case, and others, until the Bankruptcy Committee and the Court Administration and Case Management Committee reviewed these fee increases.

<sup>165</sup>The Judicial Conference, at its September 2003 session, increased this fee from one-half to the full filing fee for filing a second separate original petition effective November 1, 2003. See Director's memorandum, October 2, 2003.

<sup>166</sup>Rule 1015 of the Federal Rules of Bankruptcy Procedure. Joint husband and wife cases are permitted by 11 U.S.C. § 302.

2. **Exceptions to the Fee.** No fee is due if the court splits a case either *sua sponte* or at the request of a party other than one of the joint debtors. Additionally, no fee is due if the only reason for the split is to dismiss one of the two resulting individual cases, and the court dismisses one of the joint debtors.
3. **Chapter 7 Trustee Payments upon Installment Payment Defaults and *In Forma Pauperis* Proceedings.** The clerk may pay the trustee only to the extent the clerk collects the filing fee.<sup>167</sup> Consequently, if the clerk collects less than the full filing fee, the trustee will receive only a *pro rata* portion of the funds collected.<sup>168</sup> If the court permits the debtor to proceed *in forma pauperis*, the clerk collects nothing and is able to pay the trustee nothing.
4. **Accounting. (Credit fund 510000.)**<sup>169</sup>

**Table C-1. Fees Due upon Splitting Cases**

Chapter	Fee	Account
Chapters 7	\$220.00	510000
Chapter 13	\$150.00	510000
Chapter 12	\$200.00	510000
Chapter 11	\$1,000.00	510000

## Part D. Fees for Converting Cases

1. **Fees Due.**
  - A. **Conversions to Chapter 11.** When the court converts either a chapter 7 or a chapter 13 case to one under chapter 11 at the debtor's request, the clerk must collect a conversion fee equal to the difference between the chapters 7 and 13 filing fees and the chapter 11 filing fee. The current chapter 11 filing fee is **\$1,000.00**. The fee is due after the court grants the debtor's motion.

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<sup>167</sup>This is a change from pre-October 17, 2005 policy. Directors memorandum, October 5, 2005, General Counsel's memorandum, October 6, 2005.

<sup>168</sup>Bankruptcy Rule 1017(b)(2).

<sup>169</sup>See Part B, ¶6.H.(7) for a discussion of the accounting for payments to trustees in split chapter 7 cases.

- (1) **Conversions from Chapter 7.** Since the current chapter 7 filing fee is \$245, the clerk must collect **\$755**.
- (2) **Conversions from Chapter 13.** Since the current chapter 13 filing fee is \$235, the clerk must collect **\$765**.
- (3) **Conversions from Chapter 12.** Since 28 U.S.C. § 1930 omits conversions from chapter 12, **no fee is due**.
- (4) **Re-conversions to Chapter 11.** Occasionally, a case, filed under chapter 11, is first converted from chapter 11 to chapter 7, then reconverted from chapter 7 to chapter 11. No fee is due upon the reconversion to chapter 11. The intent is to prevent a debtor from defeating the chapter 11 filing fee by filing a chapter 7 or 13 petition then converting to chapter 11. Since the debtor paid the full chapter 11 fee with the original petition, no additional fee is due upon reconversion.<sup>170</sup>
- (5) **Accounting.** The clerk credits **three-fourths (\$566.25** in chapter 7 conversions and **\$573.75** in chapter 13 conversions) of the fee to the United States Trustee System Fund, (**fund 5073XX**), and **one-fourth (\$188.75** in chapter 7 conversions and **\$191.25** in chapter 13 conversions) to the general fund of the Treasury, (**fund 086900**).<sup>171</sup>

**B. Conversions to Chapter 7.**<sup>172</sup> The clerk must collect **\$15** upon receiving either a motion to convert a case to chapter 7 or a notice of conversion.<sup>173</sup> The clerk will use the fee to pay the case trustees.<sup>174</sup> If the trustee serving in the case before the conversion is the movant, the conversion fee is payable only from the estate that existed before conversion. (**Credit fund 6855BK.**)

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<sup>170</sup>See *In re United Bonding International, LLC*, No. 00-11838-ECF-RTB (Bankr. D. Ariz. Nov. 12, 2001).

<sup>171</sup>28 U.S.C. § 589a(b)(6).

<sup>172</sup>Item 10 of the Bankruptcy Court Miscellaneous Fee Schedule requires that a movant pay a **\$15** fee to file a motion to convert a case under chapter 11 to one under chapter 7. In addition, Item 10 requires a chapter 12 or chapter 13 debtor pay a **\$15** fee to file a notice of conversion to chapter 7. The procedure differs from converting to chapter 11 because the source of law creating the fee is different. The law addressing conversion to chapter 11 is 28 U.S.C. § 1930(a)(7), the source addressing chapter 7 conversions is the Bankruptcy Courts Miscellaneous Fee Schedule. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 raised the chapter 7 filing fee and lowered the chapter 13 filing fee making it less expensive to file under chapter 13 then to convert to chapter 7 than to file under chapter 7 initially. An adjustment correcting the Bankruptcy Court Miscellaneous Fee Schedule is being considered.

<sup>173</sup>Under 11 U.S.C. § 1208(a) or § 1307(a).

<sup>174</sup>Under 11 U.S.C. § 330(b)(2).

- (1) **Fee Due upon Filing.** The \$15 fee<sup>175</sup> is due when a party files either a motion to convert, or a notice of conversion to chapter 7. This fee is due in addition to the fee for splitting a case.<sup>176</sup>
- (2) **No Refund upon Denial of the Motion.** If the court denies a motion to convert to chapter 7, the Judicial Conference prohibits the clerk from refunding the \$15 fee collected when the motion was filed. The Judicial Conference prohibits the clerk from refunding these fees even if the party filed the case in error, the court dismisses the case, or if no trustee is appointed. The fee is earned when the motion is filed.
- (3) **Fee Collected When the Motion to Convert Is Combined with Other Motions.** When a party combines a motion to convert with any other motion (e.g., motion to dismiss), the clerk must collect the \$15 fee. Additionally, if more than one party file motions to convert a case to chapter 7, the clerk must collect the \$15 fee from each filing party. Yet, if several parties join in a single motion to convert, the clerk will only collect one \$15 fee.
- (4) **Clerk Has No Authority to Reject the Debtor's Motion to Convert for Non-payment of the Fee.** A debtor's right to convert is independent of his or her duty to pay the \$15 fee. The clerk's office must accept a notice of conversion with or without the fee. Nevertheless, the debtor's failure to pay the fee may be grounds for dismissing the case. The court may issue an order to show cause why the case should not be dismissed for failing to pay the \$15 fee.
- (5) **No Fee Due upon *Sua Sponte* Conversions.** If the court converts a chapter 12 or chapter 13 case *sua sponte*, no \$15 fee is due.
- (6) **Exemption for Case Trustee.** When a trustee serving in a case moves to convert, he or she must either pay the conversion fee, or certify in writing that the estate has no assets. If the estate has less than \$15, the estate must submit whatever it has up to \$15. Nevertheless, for the benefit of a trustee, the court may defer or waive the fee for filing a motion to convert the case.
- (7) **Exemption for United States Trustee and Bankruptcy Administrators.** The Bankruptcy Court Miscellaneous Fee Schedule exempts the United States trustee and bankruptcy administrators from the \$15 conversion fee.<sup>177</sup>

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<sup>175</sup>Item 10 of the Bankruptcy Court Miscellaneous Fee Schedule.

<sup>176</sup>Item 19 of the Bankruptcy Court Miscellaneous Fee Schedule.

<sup>177</sup> "No fees are to be charged for services rendered on behalf of the United States . . . or to bankruptcy administrators . . . ." Preamble to the Bankruptcy Court Miscellaneous Fee Schedule.



- (8) **Conversion from Chapters 12 and 13.** When joint debtors file a notice of conversion from a chapter 12 or 13 to a chapter 7, the debtors pay one \$15 fee. **(Credit fund 6855BK.)**
- (a) **Two Fees Due When Cases Split Before Conversion.** If a joint chapter 12 or chapter 13 case splits before the debtors file notices of conversion, each debtor must pay a separate \$15 fee, and file a separate notice of conversion.
- 1) **One Fee Due When Cases Split and Only One Converts.** If a joint chapter 12 or chapter 13 case splits, and only one debtor spouse files a notice of conversion or motion to convert to chapter 7, the clerk must collect the \$15 fee only from the spouse that files the notice or motion.
- (b) **One Fee Due When Cases Split After Conversion.** When a chapter 12 or chapter 13 joint case first converts to chapter 7 then splits, only one conversion fee is due. By converting first then splitting the debtors have avoided the second conversion fee. Nevertheless, the clerk will collect the fee to split the case.
- (9) **Conversion from Chapter 11.** The clerk must collect the \$15 fee when the party files the motion to convert. If the United States trustee is acting as the chapter 11 trustee and files the motion, the \$15 fee is due only to the extent assets are available in the chapter 11 estate.
- (10) **Special Instruction for Handling \$45 Trustee Fee and \$15 Trustee Surcharge in Converted Cases.** The chapter 7 trustee is entitled to both the \$45 trustee fee<sup>178</sup> and the \$15 chapter 7 trustee surcharge<sup>179</sup> even if the court converted the case either to or from chapter 7. These fees are due when the court confirms a plan or closes the case. The procedure the clerk may follow is set forth below.
2. **Notice to the Financial Deputy.** It is important to notify the financial deputy of all conversions so that the deputy can make the appropriate adjustments to the financial records.
3. **Accounting.**
- A. **Conversions to Chapter 7 from Any Other Chapter: \$15.00.**
- (1) **Entry.**

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<sup>178</sup>Under 11 U.S.C. § 330(b)(1).

<sup>179</sup>Under 11 U.S.C. § 330(b)(2).

Deposit Fund	\$15.00	11 U.S.C. § 330(b)(2); item 10, Bankruptcy Court Miscellaneous Fee Schedule	6855BK
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- (2) **When the Trustee Is the Movant.** If the trustee serving in the case before the conversion is the movant, the fee is due only from the estate that existed prior to conversion. The clerk will credit the fee to fund **6855BK**.
- (3) **Reporting.** The clerk will keep no individual case ledgers on fund **6855BK**, and will include no funds credited to or transferred from fund **6855BK** in the balances the clerk reports on the court's quarterly **AO 183**. Instead, the clerk will report funds credited to or transferred from fund **6855BK** on the courts' monthly financial report (**AO 274**).
- (4) **When the Original Petition Is Filed in a Chapter Other Than Chapter 7.** Since the clerk allocates no portion of the filing fee to the Trustee Deposit Fund (**fund 6855TT**) when a case is filed under a chapter other than chapter 7, when a case converts to chapter 7 no funds are reserved to pay the chapter 7 trustee. Consequently, the clerk must use the following procedure:
- (a) **Transferring the \$45.00 Trustee Fee.** The clerk must prepare a Schedule to Effect Correction of Receipt Transactions (**AO Form 283**) to transfer both the \$45 trustee fee from fund **086900** to fund **6855TT**, and the \$15 chapter 7 trustee surcharge from fund **6855BK** to fund **6855TT**. The clerk must post the total \$60 transferred to both the individual trustee ledger, and the Treasury control account for fund **6855TT**. The clerk also must reflect the \$60 total on the court's quarterly **AO 183**. The clerk must report receipts and transfers on **AO 274s**. The following examples illustrate this procedure:
- (b) **Example #1. Conversion from Chapter 13 to Chapter 7.** Chapter 13 fee collected: \$150. (Credit \$55 to fund **086900**, \$52.50 to fund **510000**, and \$42.50 to fund **5073XX**). Transfer \$45 from fund **086900** to fund **6855TT**. Transfer \$15 from fund **6855BK** to fund **6855TT**.
- (c) **Example #2. Conversion from Chapter 11 to Chapter 7.** Chapter 11 fee collected: \$1,000. (Credit \$200 to fund **086900**, \$550 to fund **5073XX**, and \$250 to fund **510000**.) Transfer \$45 from fund **086900** to fund **6855TT**. Transfer \$15 from fund **6855BK** to fund **6855TT**.

(d) **Installment Payment Defaults and *In Forma Pauperis* Proceedings.** The clerk may pay the trustee only to the extent the clerk collects the filing fee.<sup>180</sup> Consequently, if the clerk collects less than the full filing fee, the trustee will receive only a *pro rata* portion of the funds collected.<sup>181</sup> If the court permits the debtor to proceed *in forma pauperis*, the clerk collects nothing and is able to pay the trustee nothing. The preceding examples assume no proration was necessary.

(5) **Note on Cases Filed Before the United States Trustee's Entry on Duty.** In cases filed prior to the United States trustee's entry on duty in the district, the clerk deposited no funds to the United States Trustee System Fund (**fund 507310** now **fund 5073XX**). Consequently, the clerk must transfer \$45 to the trustee deposit fund (**fund 6855TT**) from the general fund of the Treasury (**fund 086900**), and must transfer the \$15 chapter 7 trustee surcharge from fund **6855BK**. The surcharge applies to all chapter 7 cases *closed* on or after October 22, 1995.<sup>182</sup>

**B. Accounting for Conversions to Chapter 11.**<sup>183</sup>

(1) **Entries upon Converting from Chapter 7 to Chapter 11 - \$780.**

General Fund	\$195.00	31 U.S.C. § 3302(b)	086900
Special Fund for the U.S. Trustee	\$585.00	28 U.S.C. § 589a.(b)(6)	5073XX

(2) **Entries upon Converting from Chapter 13 to Chapter 11 - \$850.**

General Fund	\$212.50	31 U.S.C. § 3302(b)	086900
Special Fund for the U.S. Trustee	\$637.50	28 U.S.C. § 589a.(b)(6)	5073XX

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<sup>180</sup>This is a change from pre-October 17, 2005 policy. Directors memorandum, October 5, 2005, General Counsel's memorandum, October 6, 2005.

<sup>181</sup>Bankruptcy Rule 1017(b)(2).

<sup>182</sup>See Director's memorandum, November 13, 1995.

<sup>183</sup>The Courts Improvement Act of 2000, P.L. 106-518 (Nov. 13, 2000; 114 Stat. 2410) increased the conversion fee to reflect the current filing fee for chapter 11 cases. Consequently, a petitioner will no longer save money by filing under another chapter then converting to chapter 11.

**C. Trustee Fees upon Conversion from Chapter 7 to Another Chapter.**

- (1) Trustee Entitled to Payment.** When a chapter 7 case converts to another chapter, the chapter 7 trustee remains entitled to the fee, and no transfer of funds is required. The clerk deposited the \$15 trustee surcharge and the \$45 trustee fee to **fund 6855TT**.
- (2) Timing of the Payment to the Chapter 7 Trustee.** The clerk should delay paying a chapter 7 trustee appointed before the case converted until the court confirms a plan under the new chapter. When the clerk waits until confirmation, he or she minimizes the risk of having no funds available to pay the successor chapter 7 trustee in the event the court reconverts the case to chapter 7, and a different chapter 7 trustee is appointed. Chapter 7 trustees share the \$60 fee.
- (3) Entries When No Chapter 7 Trustee Was Appointed.** In the rare case in which no trustee was appointed, the clerk must transfer the \$45 trustee fee from **fund 6855TT** to **fund 086900**. Additionally, the clerk also must transfer the \$15 trustee surcharge from **fund 6855TT** to **fund 6855BK**. In cases that the United States trustee serves as the case trustee, the clerk must transfer the fees credited to **fund 6855TT** to **fund 5073XX** to satisfy 11 U.S.C. § 330(d).

**Part E. Fees for Interdistrict Transfers.**

- 1. No Fee Is Due.** The clerk in the district receiving the transferred case will collect no fee when the parties transfer a case from one district to another.
- 2. Transfer of Collected Fees and Case File.** The clerk transfers both the case file and the collected fees when the parties transfer a case pending under chapter 7 from one district to another. The clerk only transfers the case file when the parties transfer a case pending under chapter 11, chapter 12, or chapter 13 from one district to another, the clerk transfers no fees when the parties transfer cases under these chapters.
- 3. Accounting.**<sup>184</sup> Courts adjust their financial records using a Standard Voucher form, a form developed locally, or FINSYS form AO283. The transferring court sends this adjustment document to the court receiving the case either electronically or regular mail. The transferring court will post to the adjustment document by decreasing fund 6855TT and

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<sup>184</sup>See Volume I, Chapter VII, Exhibit I-9 of the Guide for an example of AO 283s for a case transfer. In the past, if the parties transferred a chapter 7 bankruptcy case between districts the transferring district would prepare a Schedule to Effect Correction of Receipt Transactions (**AO 283**) and submit it to the Administrative Office, Financial Records and Reports Section (FRRS). FRRS would process the AO 283, send a copy back to the transferring district, and send a copy to the receiving districts.

increasing fund 387500. When the court receiving the case receives the adjustment document, it will post to its financial records by decreasing fund 387500 and increasing fund 6855TT. The court receiving the case will show the increase in fund 6855TT as belonging to the specific case number assigned to the transferred case. Each court will reflect these adjustments in the AO274 Monthly Statement of Accountability and Transactions. The AO no longer requires a copy of the adjustment document.<sup>185</sup>

## **Part F. Miscellaneous Contested Proceedings Fees**

### **1. Fees Due.<sup>186</sup> The current fee is \$150.<sup>187</sup> (Credit fund 510000.)**

- A. Applying the Fee.** This fee applies to motions to terminate, annul, modify, or condition the automatic stay arising under 11 U.S.C. § 362(a), motions to compel abandonment of property of the estate under Rule 6007(b) of the Federal Rules of Bankruptcy Procedure, and motions under 28 U.S.C. § 157(d) to withdraw the reference of a case or a proceeding.

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<sup>185</sup>Previously, the clerks from both the transferring court and the receiving court reported the interdistrict trustee fee transfers on their monthly financial report (AO 274s). The Transferring Court prepare an original and two copies of AO 283 to initiate transfer, recorded the AO 283 on its cash receipt journal as a receipt (increase) to fund 387500 (Budgetary Clearing Account) and a negative receipt (decrease) to fund 6855TT, after recording the **AO 283** on the cash receipts journal, sent a copy of the AO 283 to the court receiving the case to initiate its portion of the transfer. It then deducted the amount transferred from the deposit fund control account, deducted the amount transferred from the appropriate trustee ledger card, reflected the transfer to the Budgetary Clearing Account on the Statement of Accountability (AO 274), and sent a copy of the AO 283 to the FRRS for processing along with the monthly financial report (AO 274). FRRS kept all copies of the AO 283 sending nothing back to the court. The transferring court then transferred the case docket to the receiving court. The receiving court, after receiving the transferring district's AO 283, prepared another AO 283, recorded it on its cash receipts journal as a receipt (increase) to fund 6855TT and negative receipt (decrease) to fund 387500, sent a copy of the AO 283 to the court transferring the case to indicate the transfer was completed, added the amount transferred to the deposit fund control account, prepared an individual trustee ledger card for the amount transferred, and reflected the transfer from the Budgetary Clearing Account on its Statement of Accountability (AO 274). It then sent a copy of the AO 283 to FRRS for processing along with the AO 274. FRRS kept all copies of the AO 283 sending nothing back to the court

<sup>186</sup>Item 20 of the Bankruptcy Court Miscellaneous Fee Schedule. At its September 2004 session the Judicial Conference increased the fee to file a civil action from \$150 to 250. Since it recently increased the fee to file certain contested proceedings, the Conference severed the connection between the civil action fee and these fees fixing the latter at \$150. The Judicial Conference, at its September 2003 session, increased this fee from one-half to the full filing fee under 28 U.S.C. § 1914(a) for civil actions other than a writ of habeas corpus. This change became effective November 1, 2003. See Director's memorandum, October 2, 2003. Previously, the Judicial Conference changed this fee from \$60 to one-half of the civil action filing fee effective January 1, 1998.

<sup>187</sup>See Director's memorandum, November 24, 1997.

- B. Motions to Withdraw the Reference.** The fee applies to all motions<sup>188</sup> filed to withdraw the reference. Accordingly, the fee is due for motions to withdraw the reference of the administrative case, an adversary proceeding, or a contested proceeding. The Judicial Conference amended this item to clarify that the fee applies to motions to withdraw a reference of either a proceeding<sup>189</sup> or a case.<sup>190</sup>
- 2. Exemptions for Certain Motions to Modify the Automatic Stay.** Although the fee is due for filing a motion to modify the automatic stay,<sup>191</sup> the Bankruptcy Court Miscellaneous Fee Schedule provides certain exceptions.
- A. Co-debtor Stays.** No fee is due to file a motion for relief from the codebtor stay under 11 U.S.C. §§ 1201 and 1301.
- B. Approvals of Stipulations.** No fee is due to file a motion for court approval of an agreement to any type of relief from the automatic stay.
- C. Family Support Obligations.** No fee is due to file a motion for relief from the automatic stay by a child support creditor, or representative of a child support creditor if they file the required form.<sup>192</sup>
- 3. Exemption for Trustees' Notice of Abandonment.** A trustee may abandon property of the estate by notice; therefore, no motion is necessary and no fee is due. Additionally, no fee is due if a trustee files a motion seeking a "comfort order."<sup>193</sup>
- A. Creditors' Request for Abandonment.**<sup>194</sup> Unlike a case trustee, other parties in interest must file a motion to abandon property. The motion requires judicial action even if it is accompanied by a document entitled "Abandonment" signed by the case trustee. Consequently, these parties in interest must pay the fee for filing a motion.<sup>195</sup>

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<sup>188</sup>Under 28 U.S.C. § 157(d).

<sup>189</sup>Under 28 U.S.C. § 157(d).

<sup>190</sup>Director's memorandum, November 8, 1995.

<sup>191</sup>Arising under 11 U.S.C. § 362(a).

<sup>192</sup>Director's memorandum dated November 8, 1995. Exhibit 10 is a copy of the form. The Judicial Conference approved an amendment to this fee to effectuate section 304(g) of the Bankruptcy Reform Act of 1994. Congress intended that Act to enhance collection of family support obligations.

<sup>193</sup>Bankruptcy Judges Division letter, September 2, 1992.

<sup>194</sup>11 U.S.C. § 554(b).

<sup>195</sup>Bankruptcy Judges Division memorandum, July 8, 1993.

4. **Combined Motions for Relief from the Automatic Stay and to Compel the Trustee to Abandon Property.** A party may combine a motion for relief from the automatic stay with a motion to compel the trustee to abandon property of the estate and pay a single fee. No fee is due for a combined agreed motion for relief from the stay and to abandon property.<sup>196</sup>
5. **Accounting.** This fee is deposited to the Special Fund for the Judiciary (**fund 510000**).

A.

Special Fund for the Judiciary	\$150.00	510000
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## Part G. Fees for Filing Adversary Proceedings.

1. **Fees Due.** For complaints initiating any civil action other than a writ of *habeas corpus*, the clerk must collect a fee *usually*<sup>197</sup> equal to the filing fee for a civil action in the district court.<sup>198</sup> The fee for filing a civil action is **\$250**.<sup>199</sup> The clerk must collect the fee when the plaintiff files the complaint. (**Credit \$120 to fund 086900; credit \$130 to fund 510000**).<sup>200</sup>
  - A. **Removals to Bankruptcy Court.** The fee for filing an adversary proceeding is due whether a party files the action in bankruptcy court originally or a party removes the action to bankruptcy court from another forum. Thus, when a party files a notice of removal, the clerk must collect the prescribed fee for filing an adversary proceeding.
  - B. **Adversary Proceeding Initiated by a Trustee (or by a Debtor in Possession Acting for the Benefit of the Bankruptcy Estate).**

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<sup>196</sup>Bankruptcy Judges Division letter, April 1, 1991.

<sup>197</sup>Although the Deficit Reduction Act of 2005 increased the district court civil action fee, at its March session, the Judicial Conference decided to defer raising the adversary proceeding fee, and others, until the Bankruptcy Committee and the Court Administration and Case Management Committee were able to review these fee increases. See Director's memorandum dated March 24, 2006.

<sup>198</sup>Item 6, Bankruptcy Court Miscellaneous Fee Schedule. At its September 2004 session, the Judicial Conference increased the civil filing fee from \$150 to \$250 but deferred making the increase effective for filing an adversary proceeding until September 20, 2005. See Director's memorandum dated August 10, 2005. Before September 20, 2005, the fee was increased December 18, 1996. See Director's memorandum, November 8, 1996.

<sup>199</sup>28 U.S.C. § 1914(a).

<sup>200</sup>Exhibit 10 is Form B281, Appearance of Child Support Creditor or Representative.

- (1) **Fees Must Be Collected.** The clerk must collect the fee when a case trustee, including a United States trustee acting as a case trustee in a case, files an adversary proceeding whether by original process or by removal. Additionally, the clerk must collect the fee when a debtor in possession in a chapter 11 or chapter 12 case files an adversary proceeding, except in the circumstances noted below.
- (2) **Fee Payable Only from the Estate.** When due, the fee is payable only from the estate. No fee or portion of the fee is due from the personal assets of the trustee or debtor in possession.
- (3) **Fee Deferred for Insolvent Estates.** If the estate has no liquid funds to pay the fee when the trustee or debtor in possession files the adversary proceeding, the court may defer payment by a trustee or debtor in possession until the estate secures liquid funds. Some courts require an affidavit stating that there are insufficient funds in the estate to pay the fee.
- (4) **Fee May Be Payable from a Chapter 13 Plan.** The fee schedule provides that the trustee must pay the fees for adversary proceedings only from the estate, and only to the extent the estate has assets. Consequently, the chapter 13 trustee may pay this fee from the plan payments the trustee holds on deposit.<sup>201</sup>
- (5) **Fee is Due Even if the Action Is Unsuccessful.** The fee is due even if the trustee or debtor in possession is unsuccessful, provided the estate has sufficient funds to pay the fee.<sup>202</sup>
- (6) **Fee Is Given an Administrative Priority in Distribution.** The filing fee is an administrative expense with first priority in payment from the estate along with other administrative expenses.<sup>203</sup> If the funds in the estate are insufficient to pay all of the administrative expenses in full, the filing fee is paid *pro rata* with the other administrative claims.<sup>204</sup>
  - (a) **Chapter 11 Confirmations.** In chapter 11 cases, the debtor must either pay all court fees in full, or provide in its plan for full payment of court fees on the plan's effective date as a condition of confirmation.<sup>205</sup>

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<sup>201</sup>Bankruptcy Judges Division memorandum, January 15, 1992.

<sup>202</sup>See *In re The Phoenix Group*, 64 B.R. 527 (Bankr. 9th Cir. 1986).

<sup>203</sup>Under 11 U.S.C. § 507(a)(1).

<sup>204</sup>Classified in § 507(a)(1).

<sup>205</sup>11 U.S.C. § 1129(a)(12).



- (b) **Chapter 12 and 13 Confirmations.** In chapter 12 and 13 cases, the debtor must make provisions to pay all court fees in full as a condition of confirmation.<sup>206</sup>
- (c) **Cases Converted to Chapter 7.** When the court converts a case to chapter 7, administrative expenses incurred in the chapter 7 case have priority over unpaid administrative expenses (including court fees) incurred in the preconversion chapter.<sup>207</sup>

**C. Exceptions to the Fee.** No fee is due from either the debtor or the United States.

- (1) **No Fee Is Due When Either a Debtor in Possession Acting for the Benefit of an Individual Debtor or an Individual Debtor Initiates the Adversary Proceeding.**<sup>208</sup> When the debtor initiates an adversary proceeding, either by original process or by removal, no filing fee is due. This exemption is inapplicable to a debtor in possession under a chapter 11 or chapter 12 case unless the debtor in possession is engaging in an action for the benefit of an individual debtor, rather than in a fiduciary capacity for the benefit of the bankruptcy estate.
  - (a) **Actions for Which the Clerk Must Collect the Fee.** The clerk must collect the fee when a debtor in possession files an adversary proceeding for the benefit of the estate. The following are examples of those actions:
    - 1) § 363(h) -- sale of both the interest of the estate and of a co-owner in property;
    - 2) § 542(a) -- turnover;
    - 3) § 544 -- "strong arm" avoidance;
    - 4) § 545 -- statutory lien avoidance;

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<sup>206</sup>11 U.S.C. §§ 1225(a)(2) and 1325(a)(2).

<sup>207</sup>11 U.S.C. § 726(b).

<sup>208</sup>Usually, this exception applies in either chapter 12 or consumer chapter 11 cases when the debtor in possession initiates the action. (Consumer debtors under chapter 7 and chapter 13 never pay the adversary filing fee.) Chapter 12 and consumer chapter 11 cases may trigger two kinds of actions. The first concerns business aspects of the bankruptcy estate, such as sales (364(h)), turnover of property (542(a)), strong arm avoidance (544), lien avoidance (545), preference avoidance (547(a)), fraudulent transfer avoidance (548(a)), recovering avoided transfers (550), and recovering setoffs (553(b)). These actions are listed in section C(1)(a) above, and the clerk must collect the filing fee for these actions. The second kind of action concerns the consumer debtor personally, such as anything relating to the consumer debtor's discharge or their exemptions. Business bankruptcies, on the other hand, trigger fewer actions that concern the debtor personally. One example that may apply may concern stopping a creditor who is trying to collect a pre-petition chapter 11 claim after confirmation of a chapter 11 plan. Businesses receive no chapter 7 discharge, and usually have no exemptions.

- 5) § 547(a) -- preference avoidance;
- 6) § 548(a) -- fraudulent transfer avoidance;
- 7) § 550 -- recovery of avoided transfer from a transferee; and
- 8) § 553(b) -- recovery of setoff.

**(b) No Fee Is Due with Dischargeability Complaints in Chapter 11.** Adversary proceedings which a debtor in possession might initiate only for the benefit of the "debtor" include actions under 11 U.S.C. § 1141(d)(2). This statute makes applicable 11 U.S.C. § 523 to chapter 11 individual debtors allowing an individual chapter 11 debtor to file a complaint to determine the dischargeability of a claim. Accordingly, no fee is due for complaints filed by debtors in possession under section 1141(d) of the Code.

**(c) No Fee Is Due with Dischargeability Complaints in Chapter 12 Cases.** Adversary proceedings which a debtor in possession might initiate only for the benefit of the "debtor" include actions under 11 U.S.C. § 1228(a)(2). This statute makes applicable 11 U.S.C. § 523 to chapter 12 debtors allowing a chapter 12 debtor to file a complaint to determine the dischargeability of a claim. Accordingly, no fee is due for complaints filed by debtors under section 1228(a)(2) of the Code.

**(d) The Nature of Some Actions Determines the Exemption.** Some adversary proceedings -- such as complaints seeking injunctive relief, declaratory judgment, or avoidance of a lien under 11 U.S.C. § 506(d) -- may or may not require a fee. No fee is due if the action benefits an individual debtor. On the other hand, the clerk must collect the fee if the action only benefits a chapter 11 or chapter 12 estate.

**(2) No Fee Is Due When the Adversary Proceeding Is Filed by the United States.**

**(a) The United States.** When the United States, other than a United States trustee acting as a trustee in a case, initiates an adversary proceeding, either by original process or by removal, no filing fee is due. An agency of the United States is considered the United States for purposes of this exception.

**(b) Government Corporations.**<sup>209</sup> The Bankruptcy Court Miscellaneous Fee Schedule fails to treat governmental corporations the same as "the United States." The Schedule provides no exemption from fees for government

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<sup>209</sup>In March 1993, the Judicial Conference approved eliminating the exemption for federal agencies for using the court's electronic access services. Additionally, the Conference approved eliminating the federal agencies exemptions for reproducing and search fees where electronic access is available. Consequently, corporations treated as "the United States," such as the PBGC, would pay these fees.

corporations unless the circuit's case law,<sup>210</sup> or a provision in the legislation governing the particular corporation establishes an exemption.

- 1) **Examples of Corporations Treated As "The United States."**  
Examples of governmental corporations designated by statute as instrumentalities of the United States are the Federal Deposit Insurance Corporation ("FDIC")<sup>211</sup> and The Pension Benefit Guaranty Corporation (PBGC).<sup>212</sup>
- 2) **Examples of Corporations Not Treated As "The United States."**  
Neither case law nor statute treat The Securities Investor Protection Corporation (SIPC) as an agency or establishment of the United States government.<sup>213</sup> Examples of other corporations whose enabling legislation fails to establish them as agencies or establishments of the United States are AMTRAK<sup>214</sup> and the Corporation for Public Broadcasting.<sup>215</sup>
- (3) **No Fee Is Due When Cases Are Transferred.** When parties transfer an adversary proceeding from one district to another, no fee is due in the district receiving the proceeding.
- (4) **No Fee Is Due for Third Party Complaints, and Other Actions to Add Parties After an Adversary Proceeding Has Been Commenced.** The clerk collects no additional filing fee when a new party is brought into the controversy, either by third party complaint or otherwise, after the adversary proceeding is filed.

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<sup>210</sup>The reason for charging some Federally-created entities is case law stating that the authority to sue and be sued in its own name places the entity in the same position as a private litigant with respect to court costs, including the clerk's fees.

<sup>211</sup>By the Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub.L.No. 101-73, (August 9, 1989) ("FIRREA"). 12 U.S.C. § 1819(b), as amended by section 209(4) of FIRREA. FIRREA defined the FDIC as a federal party whenever it appears in Federal court, thus availing it of the Judicial Conference's fee exemption for services rendered on behalf of the United States. The FDIC formerly was denied exemption from payment of court fees, but was designated "an agency of the United States" for purposes of prosecuting and defending actions in the federal courts. Accordingly, the FDIC is exempt from payment of the fee.

<sup>212</sup>General Counsel letter, December 17, 1991.

<sup>213</sup>15 U.S.C. § 78ccc(a)(A).

<sup>214</sup>45 U.S.C. § 541.

<sup>215</sup>47 U.S.C. § 396(b).

- (5) **No Fee Is Due for Transfers from the District Court to the Bankruptcy Court in the Same District.** The fee is due only if a civil action is removed from a state court or a federal court under 28 U.S.C. § 1452. No fee is due when the parties transfer a civil action from the district court to the bankruptcy court in the same district. No fee is due because a transfer from the district court to the bankruptcy court in the same district is a reference under 28 U.S.C. § 157(a).
  - (6) **No Fee Is Due for Securities Investor Protection Act.** No fee is due when the parties remove a civil proceeding filed under the Securities Investor Protection Act (SIPA) to the bankruptcy court. No fee is due because a statute requires a SIPA removal. A SIPA removal is not an exercise of discretion by a party selecting an alternate forum to adjudicate the matter. Since the district court clerk collected a fee to file the proceeding initially, the bankruptcy court clerk collects no additional filing fee.
    - (a) **Limitation to the Exception.** This exception is inapplicable to adversary proceedings *related to* the SIPA proceeding which are removed to the bankruptcy court. In “related to” cases, the clerk must collect the fee for adversary proceedings unless the transfer is from the district court to the bankruptcy court in the same district.
  - (7) **No Fee Is Due from Child Support Creditors.** If a child support creditor or its representative is the plaintiff and files the form required by § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.<sup>216</sup>
2. **Prohibition Against Refunding the Filing Fee.** The Judicial Conference prohibits refunding the fee for filing a complaint. The Conference prohibits refunding the fee even if the party filed the complaint in error, or if the court dismisses the adversary proceeding.
  3. ***In Forma Pauperis* Complaints.** A request to file an adversary proceeding *in forma pauperis* requires a judicial determination that the individual party meets the *in forma pauperis* standards.<sup>217</sup> Although a chapter 7 debtor who qualified for *in forma pauperis* status upon filing may qualify for *in forma pauperis* status in the adversary proceeding, the courts are split on whether a bankruptcy court may rule on such a request by other litigants.<sup>218</sup>

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<sup>216</sup>Item 6, Bankruptcy Court Miscellaneous Fee Schedule.

<sup>217</sup>Set forth in 28 U.S.C. § 1915(a).

<sup>218</sup>The Court of Appeals for the Ninth Circuit held that bankruptcy courts lack the authority to waive prepayment of filing fees. *Perroton v. Gray (In re Perroton)*, 958 F.2d 889 (9th Cir. 1992). Cases holding that bankruptcy courts have authority to authorize *in forma pauperis* proceedings under 28 U.S.C. § 1915(a) include: *In re Shumate*, 91 B.R. 23 (Bankr. W.D.Va. 1988); *In re Palestino*, 4 B.R. 721 (Bankr. M.D. Fla. 1980); and *In re Sara Allen Home, Inc.*, 4 B.R. 724 (Bankr. E.D. Pa. 1980). BAPCPA 2005 authorized bankruptcy courts to permit chapter 7 debtors to

- A. Only the Prepayment of the Fee Is Waived.** When the court allows a party to proceed *in forma pauperis*, it waives only the prepayment of fees. If the plaintiff recovers a monetary judgment, it must pay the accrued fees in full.
- 4. Procedure if the Fee Fails to Accompany the Complaint.** If a petitioner files a complaint without either paying the fee or filing a petition to proceed *in forma pauperis*, the clerk may accept the papers and designate them as "received," "accepted," or "lodged for filing" to avoid any issues the petitioner may raise under Federal Rule of Bankruptcy Procedure 5005(a).
- 5. Accounting.** The fee for filing an adversary proceeding is **\$250**,<sup>219</sup> and the clerk must collect it when the petitioner files the complaint. Of this fee, the clerk credits **\$120** to the general fund of the Treasury (fund **086900**), and **\$130** to a special fund<sup>220</sup> available to offset funds appropriated for the operation and maintenance of the courts (**fund 510000**).<sup>221</sup>

**Allocation of Adversary Proceeding Fees**<sup>222</sup>

General Fund	\$120.00	31 U.S.C. § 3302(b)	086900
Special Fund for the Judiciary	\$130.00	Pub. L. No. 101-162, 101-121	510000

## **Part H. Fees for Filing Appeals and Cross Appeals.**

- 1. Fees Due.**<sup>223</sup> The clerk must collect both a notice of appeal fee of **\$5**, and a docketing fee of **\$250** when a party files an appeal in a bankruptcy case or proceeding. The clerk credits

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proceed in *in forma pauperis*.

<sup>219</sup>The deficit Reduction Act of 2005 increased the 28 U.S.C. § 1914(a) civil action fee to \$350. Nevertheless, at its March session, the Judicial Conference decided to defer raising the adversary proceeding fee, and others, until the Bankruptcy Committee and the Court Administration and Case Management Committee reviewed these fee increases.

<sup>220</sup>Established by 28 U.S.C. § 1931.

<sup>221</sup>See Director's memorandum, August 10, 2005.

<sup>222</sup>See note to 28 U.S.C. § 1931 and Director's memorandum, August 10, 2005.

<sup>223</sup>The deficit Reduction Act of 2005 increased the appellate filing fee to \$450. Nevertheless, at its March session, the Judicial Conference decided to defer raising the bankruptcy courts' fee for docketing an appeal and cross appeal, items 15 and 21 respectively, and others, until the Bankruptcy Committee and the Court Administration and Case Management Committee reviewed these fee increases.

the \$5 notice fee and \$100 of the docketing fee to the general fund of the Treasury, and \$150 of the docketing fee to the Special Fund for the Judiciary. For cross appeals, the clerk must collect the same fees, \$5 notice fee and the \$250 docketing fee, yet while the clerk credits the \$5 notice fee to the general fund of the Treasury, the clerk credits the full \$250 docketing fee to the Special Fund for the Judiciary. **(Appeals: The \$5 notice fee to fund 086900. and the \$100 of the docketing fee to fund 086900; the remaining \$150 of the docketing fee to fund 510000. Cross appeals: The \$5 notice fee to fund 086900; the full \$250 docketing fee to fund 510000.)**<sup>224</sup>

**A. Notice of Appeal Fee in Cases and Proceedings Under the Bankruptcy Code.**

Section 1930(c) of title 28 requires the clerk to collect a fee of \$5 "[u]pon the filing of any separate, or joint notice of appeal, or application for appeal, or upon the receipt of any order allowing, or notice of the allowance of, an appeal, or a writ of certiorari." The appellant or petitioner pays the fee.

**(1) Application.** This fee applies to:

- (a)** appeals from the bankruptcy court to either the district court or the bankruptcy appellate panel, and
- (b)** appeals from either the district court or the bankruptcy appellate panel<sup>225</sup> to the circuit court of appeals.

**(2) No Exception.** Since this fee is imposed by statute rather than the Bankruptcy Court Miscellaneous Fee Schedule, the Judicial Conference has no authority to create an exemption.<sup>226</sup> Consequently, unless the court grants the litigant *in forma pauperis* status, there are no exemptions to this fee.

**(3) Notice of Appeal Fee in Cases and Proceedings Under the Bankruptcy Act.** The notice of appeal fee is inapplicable to Bankruptcy Act Cases.<sup>227</sup>

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<sup>224</sup>The Judicial Conference, at its September 2003 session, increased the docketing fee for appeals and cross-appeals from \$100 to \$250 effective November 1, 2003. See Director's memorandum, October 2, 2003. Since all increases to Bankruptcy Court Miscellaneous Fee Schedule may be deposited into the Special Fund for the Judiciary (Federal Courts Improvement Act of 2000, P.L. 106-518 (Nov. 13, 2000; 114 Stat. 2410)), the \$150 increase is deposited to fund 510000.

<sup>225</sup>The clerk of the circuit court of appeals collects the notice of appeal fee in appeals from the Bankruptcy Appellate Panel.

<sup>226</sup>General Counsel memorandum, December 17, 1991.

<sup>227</sup>Former Bankruptcy Court Miscellaneous Fee Schedule, Item 9, required the clerk to collect a fee of \$5 upon the filing of a notice of appeal in a proceeding arising under the Bankruptcy Act. The Judicial Conference repealed that fee effective January 1, 1998. In 1997, the items were renumbered and Item 9 became the reopening fee. See Director's memorandum, November 24, 1997, and Bankruptcy Court Administration Division memorandum,

## **B. Docketing Fees.**

- (1) **Appellate Docketing Fee.** The clerk must collect **\$250** for docketing an appeal. The Bankruptcy Court Miscellaneous Fee Schedule, Item 15, provides "[f]or docketing a proceeding on appeal, or review from a final judgment of a bankruptcy judge pursuant to 28 U.S.C. § 158(a) and (b), the fee shall be the same amount as the fee for docketing a case on appeal or review to the appellate court as required by Item 1 of the Court of Appeals Miscellaneous Fee Schedule." The fee in Item 1 of the Court of Appeals Schedule is currently **\$250**. This fee applies to appeals from the bankruptcy court to the district court and from the bankruptcy court to the bankruptcy appellate panel. Each party that files a notice of appeal must pay a separate fee, but parties filing a joint appeal must pay only one fee.<sup>228</sup>
- (2) **Cross Appeal Docketing Fee.** The clerk must collect a separate fee for docketing a cross appeal.<sup>229</sup> The amount of the cross appeal fee is the same as the appellate docketing fee,<sup>230</sup> and is due whenever an appellee files a cross appeal.<sup>231</sup> The clerk collects this fee in addition to the **\$5** fee for filing a notice of appeal.
- (3) **Exemption for the United States.** No fee is due when the United States is the appellant.<sup>232</sup> When the United States trustee is acting as trustee in a case, however, the clerk must collect the appellate docketing fee and the cross appeal docketing fee.

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December 16, 1997. In November 2000, the Courts Improvement Act of 2000, P.L. 106-518 (Nov. 13, 2000; 114 Stat. 2410) again renumbered the items and Item 9 became the chapter 7 trustee's fee.

<sup>228</sup>Effective January 1, 1998, the language of this fee was modified by the Judicial Conference to clarify that the fee should track the fee for filing an appeal to the Court of Appeals. The amount of the fee did not change.

<sup>229</sup>Item 21 of the Bankruptcy Court Miscellaneous Fee Schedule.

<sup>230</sup>See Director's memorandum, November 24, 1997. Effective January 1, 1998, the Judicial Conference modified this fee so it now tracks the fee charged by Item 1 of the Courts of Appeals Miscellaneous Fee Schedule. The amount of the fee was \$100 and this modification left the amount of the fee unchanged.

<sup>231</sup> Within the 10 days under Federal Rule of Bankruptcy Procedure 8002.

<sup>232</sup>For a discussion of which entities constitute "the United States" for purposes of exemption from payment of fees, see the preceding discussion entitled "Adversary Proceeding Initiated by the United States."

- (4) **Exemption for Child Support Creditors.** No fee is due if the appellant is a child support creditor or its representative who has filed the form required by §304(g) of the Bankruptcy Reform Act of 1994.<sup>233</sup>
  - (5) **Exception for Motions for Leave to Appeal.** If a party files a motion for leave to appeal with the notice of appeal, the clerk must collect only the **\$5** fee for filing the notice of appeal. The clerk will collect the **\$250** docketing fee when the court grants the motion for leave to appeal. In an Act case, the Judicial Conference repealed the **\$5** fee, so the **\$250** docketing fee is the only fee the clerk must collect.
  - (6) **Exception for Trustees and Debtors in Possession.**<sup>234</sup> Fees for appeals and cross-appeals by bankruptcy trustees and debtors in possession are payable only from the estate, and only to the extent any estate is realized. This exception applies only to the \$250 fee required by the Bankruptcy Miscellaneous Fee Schedule, and has no effect on the \$5 notice of appeal fee under 28 U.S.C. § 1930(c).
2. **Prohibition Against Refunding either the Appellate Notice Fee or the Appellate Docketing Fee.** All fees for bankruptcy appeals are due in full when the clerk receives the documents specified in 28 U.S.C. § 1930(c),<sup>235</sup> unless the party includes a motion for leave to appeal with the notice of appeal. The Judicial Conference prohibits waiving or refunding the fee. The Conference prohibits refunding the fee even if the party files the document in error, or if the court denies or dismisses the appeal.
- A. **Premature Appeals.** If some party files a notice of appeal after the court announces a decision, but before the clerk enters the judgment, order, or decree on the docket, the clerk treats the notice of appeal as filed on the same day, but immediately following the entry of the judgment, order, or decree on the docket.<sup>236</sup>
3. ***In Forma Pauperis* Appeals.** Although a chapter 7 debtor who qualified for *in forma pauperis* status upon filing may qualify for *in forma pauperis* status in the appeal, the courts are divided whether the bankruptcy courts have the authority to waive the fee for other

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<sup>233</sup>Exhibit 10 is a copy of Form B281, Appearance of Child Support Creditor or Representative.

<sup>234</sup>On September 19, 2001, the Judicial Conference modified Items 15 and 21 of the Bankruptcy Court Miscellaneous Fee Schedule to provide for this exception. The exception became effective January 1, 2002. See Director's memorandum, November 29, 2001.

<sup>235</sup>A separate or joint notice of appeal, an application for appeal, any order allowing or notice of the allowance of an appeal, or an a appeal of a writ of certiorari.

<sup>236</sup>See Fed. R. Bankr. P. 8002(a).



litigants.<sup>237</sup> In those jurisdictions taking the view that the bankruptcy courts have the authority to waive the fee, a party may proceed with the appeal *in forma pauperis* only if the court determines that he or she meets the statutory standard.<sup>238</sup>

4. **Procedure if the Fee Fails to Accompany the Appeal.** The clerk must accept the appeal even if it is submitted with neither the fee, nor the petition to proceed *in forma pauperis*. An appellant may file a notice of appeal without paying the fee simultaneously.<sup>239</sup>
5. **Accounting.** The accounting for appeals and cross appeals differ slightly.
  - A. **Notice of Appeal Fee.** The clerk credits \$5 notice of appeal fee to the general fund of the Treasury (**fund 086900**).
  - B. **Docket Fee on Appeal.** The clerk credits the \$100 to the general fund of the Treasury (**fund 086900**), and \$150 to the Special Fund for the Judiciary (**fund 510000**).
  - C. **Cross Appeal Docket Fee.** The clerk credits the \$250 cross appeal docket fee to the Special Fund for the Judiciary (**fund 510000**).

<b>Notice of Appeal Fee</b>	General Fund	\$ 5.00	31 U.S.C. § 3302(b)	086900
<b>Docket Fee on Appeal</b>	General Fund	100.00	31 U.S.C. § 3302(b)	086900
	Special Fund for the Judiciary	150.00	Federal Courts Improvement Act of 2000, P.L. 106-518 (Nov. 13, 2000; 114 Stat. 2410)	510000

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<sup>237</sup>The Court of Appeals for the Ninth Circuit has held that bankruptcy courts lack the authority to waive pre-payment of filing fees under 28 U.S.C. § 1915(a). *Perroton v. Gray (In re Perroton)*, 958 F.2d 889 (9th Cir. 1992). In contrast, *In re Moore*, 86 B.R. 249 (Bankr. W.D. Okla. 1988), holds that bankruptcy courts have the authority to grant leave to appeal *in forma pauperis* under 28 U.S.C. § 1915(a).

<sup>238</sup>Whether the applicable statutory standard is that provided by 28 U.S.C. § 1915 or 28 U.S.C. § 1930(f) or both is unclear.

<sup>239</sup>*Parissi v. Telechron*, 349 U.S. 46 (1955). Rule 3(a) of the Federal Rules of Appellate Procedure conforms to this view: "Failure of an appellant to take any step other than the timely filing of a notice of appeal shall not affect the validity of the appeal, but is ground only for such action as the court of appeals deems appropriate, which may include dismissal of the appeal." (*See also* General Counsel memorandum, April 15, 1993.)

<b>Cross Appeal Docket Fee</b>	Special Fund for the Judiciary	250.00	PL 101-162, 101-121	510000
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## Part I. Fees Due upon Dismissal

1. **Fees Due (Filing Fee and Installment Payments).** The debtor's obligation to pay the filing fees is unchanged by a dismissal. These fees are still due, and the clerk has an obligation to pursue collection.
2. **Fees Due to the Chapter 7 Trustee.**
  - A. **Chapter 7 Dismissals Before the Meeting of Creditors.** The chapter 7 trustee is entitled to the \$45 portion of the filing fee and the \$15 chapter 7 trustee surcharge even if the court dismisses the case before the meeting of creditors.<sup>240</sup>
    - (1) **Pre-October 22, 1995 Cases.** In a case filed before October 22, 1995, in which the debtor defaults on the installment payments, the case trustee will receive that portion of the \$60 fee received<sup>241</sup> and apportioned to the **6855TT** account.<sup>242</sup>
    - (2) **Post-October 22, 1995 Cases.** In a chapter 7 case filed after October 22, 1995, in which the debtor defaults on the installment payments, the case trustee will receive that portion of the \$60 fee received and apportioned to the **6855TT** account.<sup>243</sup> The clerk will charge **6855TT** account for that portion of the \$60 fee collected.
3. **Accounting.**

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<sup>240</sup>Held under section 341 of the Bankruptcy Code.

<sup>241</sup>Under 28 U.S.C. § 1930 (a)(1).

<sup>242</sup>The clerk may pay the trustee only to the extent the clerk collects the filing fee. Consequently, if the clerk collects less than the full filing fee, the trustee will receive only a *pro rata* portion of the funds collected (Bankruptcy Rule 1017(b)(2)). If the court permits the debtor to proceed *in forma pauperis*, the clerk collects nothing and is able to pay the trustee nothing. This is a change from pre-October 17, 2005 policy. Directors memorandum, October 5, 2005, General Counsel's memorandum, October 6, 2005. Formerly, if the debtor defaulted on the installment payments, the case trustee would have received that portion of the \$45 fee collected and apportioned to the 6855TT account and, if the case closed after October 22, 1995, the full \$15 trustee surcharge. The clerk charged the unfunded portion of the \$15 trustee surcharge to fund 6855UF.

<sup>243</sup>Exhibit 8 is an example.

- A. Chapter 7 Dismissals Before a Trustee Is Appointed.** If no chapter 7 trustee is appointed before the court dismisses the case, the clerk must transfer the \$45 trustee fee initially credited to the deposit fund (**fund 6855TT**) from fund **6855TT** to the general fund of the Treasury (**fund 086900**).

## **Part J. Fees for Reopening Cases.**

- 1. Fees Due.** Usually,<sup>244</sup> the clerk must collect the same fee upon filing a motion to reopen as he or she would collect upon filing a new case<sup>245</sup> on the same day. No fee is due if the reopening is either to correct an administrative error, or to file an action related to the discharge. The court may waive this fee under appropriate circumstances, or may defer payment of the fee from trustees pending discovery of additional assets.<sup>246</sup> If payment is deferred pending discovery of additional assets, the fee shall be waived if no additional assets are discovered.<sup>247</sup>

- A. Bankruptcy Code Cases.** The clerk collects neither the \$39 administrative fee, nor the \$15 chapter 7 trustee surcharge when a party reopens a case. On the other hand, the clerk must collect the filing fee<sup>248</sup> when a party files a motion to reopen a case unless the reopening is either to correct an administrative error, or to file an action related to the discharge. The amount of the fee due is the same as the filing fee in effect for filing a new case on the date the petitioner files the motion.<sup>249</sup>

- (1) Refunds Prohibited.** The fee is for the motion to reopen. The Judicial Conference prohibits refunding the fee if the court denies the motion.

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<sup>244</sup>Although the Deficit Reduction Act of 2005 increased the chapter 7 and chapter 13 filing fees, at its March session, the Judicial Conference decided to defer raising the fee to reopen, and others, until the Bankruptcy Committee and the Court Administration and Case Management Committee were able to review these fee increases. See Director's memorandum dated March 24, 2006.

<sup>245</sup>The filing fee under 28 U.S.C. § 1930(a).

<sup>246</sup>Prior to January 1, 1998, Item 9 of the Bankruptcy Court Miscellaneous Fee Schedule imposed a **\$5** fee for filing an appeal in an Act case. On January 1, 1998, the Judicial Conference repealed that fee, and renumbered as Item 9 the previously unnumbered fee for reopening a case. In November 2000, the Courts Improvement Act of 2000, P.L. 106-518 (Nov. 13, 2000; 114 Stat. 2410) again renumbered the items, and Item 9 became the chapter 7 trustee's fee.

<sup>247</sup>The Judicial Conference, at its September 2003 session, created this exception effective November 1, 2003. See Director's memorandum, October 2, 2003.

<sup>248</sup>Prescribed by 28 U.S.C. § 1930(a).

<sup>249</sup>See Bankruptcy Court Miscellaneous Fee Schedule, Item 11; Fed. R. Bankr. P. 4007(b).

- (2) **Exemption to Correct an Administrative Error.** On motion by the court or a party in the case, the court may waive the reopening fee if the case is being reopened to correct an administrative error. To qualify for the exemption, either the clerk or the court itself must have made the error. The phrase "to correct an administrative error" does not include errors by the debtor, the debtor's attorney, or the trustee.
- (3) **Exemption for Actions Related to Discharge.** No fee is due if the case is reopened to file an action related to the debtor's discharge.<sup>250</sup> Nevertheless, a creditor must pay the fee for filing the complaint initiating the adversary proceeding. The debtor is exempt from the adversary filing fee if the debtor files the complaint.<sup>251</sup>
- (4) **Exemption for U.S. Trustees and Bankruptcy Administrators.** United States trustees and bankruptcy administrators are exempt from the reopening fee.<sup>252</sup> Nevertheless, if the United States trustee is acting as a "private trustee," he or she must pay the reopening fee unless the court waives or defers the fee.
- (5) **No Exemption for Private Trustee.**<sup>253</sup> A private trustee must pay the reopening fee unless the court waives or defers the fee. If the court declines to waive or defer the fee, a private trustee must use personal funds to pay the reopening fee, and other expenses associated with the reopening. If a private

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<sup>250</sup>This exception to the reopening fee has two sources. The first dates from the days of the Bankruptcy Act, when many creditors ignored the debtor's discharge, and sued debtors in state courts to collect discharged debts. Because state courts failed to enforce the discharge, the debtors returned to bankruptcy court, paid the reopening fee, and asked for an injunction to enforce their discharge. In March 1969 the Judicial Conference approved this exception to the reopening fee when debtors move to reopen to initiate proceedings to enforce their discharge. The Judicial Conference has stated that this exception is triggered when a case "is reopened for the purpose of issuing restraining orders or for other proceedings in connection with a discharge granted in the original [case]." JCUS-MAR 69, p. 26. The second source is Federal Rule of Bankruptcy Procedure 4007(b) which excepts dischargeability actions. That rule states that: "A complaint [to obtain a determination of dischargeability of a debt] other than under [Code] § 523(c) may be filed at any time. A case may be reopened without payment of an additional filing fee for the purpose of filing a complaint to obtain a determination under this rule."

<sup>251</sup>Item 6 of the Bankruptcy Court Miscellaneous Fee Schedule.

<sup>252</sup>Because the reopening fee is part of the Bankruptcy Court Miscellaneous Fee Schedule, the provision exempting the fee for services rendered on behalf of the United States applies. See preamble to the Bankruptcy Court Miscellaneous Fee Schedule in Exhibit 2. One court has held that the exemption applies to a United States trustee acting in his or her official capacity as a representative of the government. *In re Pomaville*, 183 B.R. 187 (Bankr. D. Minn. 1995).

<sup>253</sup>Under 28 U.S.C. § 586(a)(1), a "private trustee" is anyone who is a member of the chapter 7 trustee panel that is maintained and supervised by the United States trustee.

trustee successfully recovers assets for the estate, he or she may apply for reimbursement of these expenses from the estate.<sup>254</sup>

(a) **Waiver or Deferred Payment Permitted for Private Trustee.** The court may either waive this fee under appropriate circumstances or defer payment of the fee by the trustees pending discovery of additional assets.<sup>255</sup> If payment is deferred, the fee shall be waived if the trustee discovers no additional assets.<sup>256</sup>

(b) **Trustee Reimbursed upon Recovery.** A private trustee must pay the reopening fee from his or her personal funds unless the court waives the fee or defers payment of the fee pending recovery of additional assets. If the trustee pays the reopening fee from personal funds, and recovers assets for the estate, the trustee may request reimbursement as an administrative expense. The clerk, in coordination with the office of the United States trustee or bankruptcy administrator, must determine whether the case trustee has been paid the \$45 portion that represents the trustee fee prior to reimbursing the trustee from **fund 6855TT**.

(6) **No Exemption for Reopening to Add a Creditor.** The debtor must pay the reopening fee, and the fee for amending the schedules or lists of creditors to reopen a case to add a creditor. If the clerk must retrieve the case file from an off-site storage location, the debtor must also pay the retrieval fee.

**B. Bankruptcy Act Cases.** When the court reopens a case under the Bankruptcy Act of 1898, the amount of the fee due is the same as the filing fee due for cases filed on September 30, 1979, the last day cases were eligible to be administered under the 1898 Act.<sup>257</sup>

**C. Unpaid Balance of Original Filing Fee in Reopened Case.** If installments of the original filing fee are due when a debtor files a motion to reopen, the Administrative Office's policy requires the debtor to pay all remaining installments as well as the

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<sup>254</sup>The court usually discharges a private chapter 7, 12 or 13 trustee as part of its closing procedure. When the court reopens these cases, under F.R.Bankr.P. 5010, the U.S. trustee appoints no trustee in a reopened case under these chapters unless the court determines one is necessary. Once discharged, a case trustee has no authority to reappoint himself or herself.

<sup>255</sup>The Judicial Conference modified the reopening fee effective January 1, 1998, and November 1, 2003.

<sup>256</sup>The Judicial Conference, at its September 2003 session, inserted this exception in the Bankruptcy Court Miscellaneous Fee Schedule item governing reopening fees to clarify the exception available case trustees, and to encourage case trustees to reopen promising cases. See Director's memorandum, October 2, 2003.

<sup>257</sup>Exhibit 4 is the schedule of the Act's filing fees.

reopening fee. Although the amount of the reopening fee is the same as the fee for filing a new case, the two fees are for different services. The original fee is for filing the bankruptcy petition, and the reopening fee is for filing the motion to reopen the case.<sup>258</sup>

## 2. Accounting.

**A. Same as the Original Filing Fee.** The accounting for the reopening fee is the same as the accounting for the original filing fee for each chapter of the Bankruptcy Code. Refer to the section on filing fees for charts and discussions of the entries.

- (1) Allocation of Filing Fee in Reopened Case.** The clerk allocates the reopening fee to the various funds exactly as the original filing fee.<sup>259</sup> Note, however, that the clerk collects neither the \$39 administrative fee nor the \$15 trustee surcharge when a case is reopened.
- (2) \$45 Trustee Fee in Reopened Case.** A trustee is appointed to serve in a reopened case only if the court determines that a trustee is needed.<sup>260</sup> No trustee is appointed in a chapter 7, a chapter 12, or a chapter 13 case<sup>261</sup> unless the court determines that a trustee is necessary either to protect the interests of creditors and the debtor, or to ensure the efficient administration of the case. If no trustee is appointed in a reopened chapter 7 case, the clerk transfers the trustee's portion of the filing fee from **fund 6855TT** to **fund 086900**.
- (3) Source of \$15 Chapter 7 Trustee Surcharge.** In a reopened case, the clerk will collect no \$15 chapter 7 trustee surcharge, and so will pay the chapter 7 trustee only \$45.<sup>262</sup>

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<sup>258</sup>Nevertheless, the debtor has no obligation to pay the unpaid balance upon filing a new bankruptcy case. General Counsel memorandum, July 11, 1991.

<sup>259</sup>See Exhibit 5.

<sup>260</sup>Section 703(c) of the Code.

<sup>261</sup>Fed. R. Bankr. P. 5010.

<sup>262</sup>Before October 17, 2005, the effective date of the 2005 Bankruptcy Reform Act, the clerk paid the trustee the \$15 chapter 7 trustee surcharge from monies the clerk collected with motions and notices to convert to chapter 7 (Item 10 of the Bankruptcy Court Miscellaneous Fee Schedule). Under this system the clerk transferred \$15 from **fund 6855BK** to **fund 6855TT**. Current policy, however, authorizes no payment to the chapter 7 trustee unless collected with the filing fee. Director's memorandum, October 5, 2005; General Counsel's memorandum, October 7, 2005. Since clerks have no authority to collect the \$15 portion of the fee upon reopening, clerks have no authority to pay out this portion of the fee.

## Part K. Miscellaneous Administrative Fees.

1. **General Discussion.** Section 1930(b) of title 28, United States Code, authorizes the Judicial Conference to prescribe fees in bankruptcy cases in addition to the filing fee prescribed by 28 U.S.C. § 1930(a). Accordingly, the Judicial Conference prescribed the Bankruptcy Court Miscellaneous Fee Schedule which is Exhibit 2. Those fees associated with administrative matters are discussed below.
2. **Accounting Generally.** Federal agencies must have statutory authority to keep and use the revenues they generate.<sup>263</sup> Since the judiciary has the authority to use some revenues, the courts generate, but not others, the clerk credits some revenues the bankruptcy courts generate to the special fund for the judiciary, and others to the general fund. The courts track these credits by using separate fund numbers. The clerk also assigns special receipt account numbers to revenues credited to the general fund to track each kind of receipt. The Bankruptcy Court Miscellaneous Fee Schedule indicates the fund number credited for each fee and whether the fee is available to the judiciary.
3. **Waivers Must Be Authorized.** Although the court may extend a chapter 7 debtor's *in forma pauperis* status and Bankruptcy Court Miscellaneous Fee Schedule provides for deferring or waiving certain fees,<sup>264</sup> it provides no authority for deferring or waiving all fees for all parties. Although by enacting 28 U.S.C. § 1930(b) Congress delegated the authority to prescribe fees to the Judicial Conference, it delegated no authority to prescribe fees to the local courts. Moreover, the clerk must construe Federal Rule of Bankruptcy Procedure 9029, authorizing the court to promulgate local rules, in harmony with 28 U.S.C. § 2071(a), requiring all local rules to be "consistent with Acts of Congress." Accordingly, a court has no authority to adopt a local standing order, rule, or procedure independently deferring or waiving any items in the fee schedule.
4. **Fees Due.**
  - A. **Reproduction Fee (Item 1 - Miscellaneous Fee Schedule).** The clerk must collect **50 cents per page** for reproducing any record or paper. This fee applies to paper copies made from original documents, microfiche or microfilm, or electronic files. **(Credit fund 322350.)**

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<sup>263</sup>31 U.S.C. § 3302. In some cases, the Judicial Conference has recommended establishing new fees, or increasing existing fees conditioned upon the Congress enacting legislation permitting the judiciary to retain the income received.

<sup>264</sup>E.g., for filing a complaint when the trustee or debtor in possession is the plaintiff, and for waiving fees for amending schedules, securing copies of the local rules, reopening fees (waiver or deferral), electronic access fees, and the filing fee for filing a complaint when the debtor is the plaintiff.

- (1) **Fee Applicable to Paper Copies of Electronic Records.** The clerk must collect this fee for making paper copies of electronically-maintained court records, such as dockets and creditor lists.
- (2) **Exemption for Federal Agencies.** This fee applies to services rendered on behalf of the United States only if the record or paper requested is available through electronic access.
- (3) **Voluminous Requests by Federal Agencies.** The clerk may satisfy frequent or voluminous requests for copies by federal agencies by inviting the agency representative to the court to use the court's copying facilities.
- (4) **Documents Faxed by the Clerk's Office.** The Judicial Conference intends this fee to reimburse the government for the time and expense of providing copies. Consequently, the clerk must collect it whenever the clerk faxes documents. Nevertheless, the clerk may discourage the staff from using the court's facsimile equipment to provide copies of documents. The staff should use the facsimile machines primarily for conducting the court's internal business.
- (5) **Exemption if an Outside Agency Produces Copies.** The fee applies only to copies provided by the clerk's office. Some courts contract with outside organizations to provide copies of court documents. They often can make copying service available at a price lower than the fee prescribed by the Judicial Conference for copies provided by the clerk. If the clerk decides to use a privately operated copying service, he or she must award the court's contract to the provider through the competitive process. The clerk may consult the Contracts Division of the Administrative Office to ensure that the court complies with all applicable regulations.
- (6) **FEMA Waiver.** On March 4, 1995, the Judicial Conference adopted a general policy permitting a waiver of fees for copies of documents required by FEMA from victims of natural disasters for emergency aid applications. This policy permits the Director of the Administrative Office of the United States Courts to waive fees for copying, searching, microfiche or microfilm copying, and retrieving archived documents.
- (7) **Accounting - 28 U.S.C. § 1930(b)(1).**
  - (a) The clerk deposits receipts to the Treasury's general fund account 322350.

General Fund	\$.50 per page	31 U.S.C. § 3302(b)	322350
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**B. Certification Fee (Item 2 - Miscellaneous Fee Schedule).** The clerk must collect **\$9** for certifying any document or paper, whether the clerk makes the certification directly on the document or by separate instrument. For exemplifying any document or paper, the clerk must collect twice the amount of the charge for certification (**\$18**). **(Credit \$5 to fund 322360 and \$4 to fund 510000.)**

(1) **Exemplifications.** The Judicial Conference amended the exemplification fee, effective January 1, 1998. Exemplifications are twice the amount charged for certifications because of the additional time and resources required. Currently, since the fee for certifying a document is \$9, the fee for an exemplification is **\$18. (Credit \$10 to fund 322360 and \$8 to fund 510000.)**

(2) **Combined Search/Certification.** If the clerk certifies the results of a search, or conducts a search to retrieve the document he or she is certifying, the clerk must collect the \$9 certification fee in addition to the \$26 search fee. Additionally, the clerk must charge appropriate copy fees.

(3) **Accounting. - 28 U.S.C. § 1930(b)(2).**

(a) The clerk deposits **\$5.00** to the Treasury's general fund account 322360, and **\$4.00** to the Special Fund for the Judiciary, account 510000.

General Fund	\$5.00	31 U.S.C. § 3302(b)	322360
Special Fund for the Judiciary	\$4.00	P.L. 101-162, 101- 121; P.L. 106-518 (Nov. 13, 2000; 113 Stat. 2410)	510000

**C. Reproducing Recordings of Proceedings (Item 3 - Miscellaneous Fee Schedule).** The clerk must collect **\$26 including the cost of materials** for reproducing magnetic tape recordings whether cassette or reel-to-reel. **(Credit \$15 to fund 322350 and \$11 to fund 510000.)**

(1) **Comment.** The clerk must collect fees to reproduce recordings of proceedings, and for each portion of a recording reproduced. The clerk must collect fees for video as well as audio tapes. Originally, the clerk collected this fee for magnetic tape recordings, but, at its March 2001 session, the Judicial Conference expanded the fee by removing the reference to the particular medium.

(2) **Federal Agency Exemptions.** Federal agencies have no exemption from this fee when the record is available through the court's CM/ECF system.

(3) **Accounting - 28 U.S.C. § 1930(b)(3).**

- (a) The clerk deposits **\$15.00** the Treasury's general fund account 322350, and **\$11.00** to the Special Fund for the Judiciary, account 510000.

General Fund	\$15.00	31 U.S.C. § 3302(b)	322350
Special Fund for the Judiciary	\$11.00	P.L. 101-162, 101- 121; P.L. 106-518 (Nov. 13, 2000; 113 Stat. 2410)	510000

**D. Amendments to Schedules, List of Creditors, Matrix, or Mailing Lists (Item 4 - Miscellaneous Fee Schedule).**<sup>265</sup> The clerk must collect **\$26** for each amendment to a debtor's schedules of creditors or lists of creditors. Nevertheless, the bankruptcy judge may waive the charge for good cause. **(Credit \$20 to fund 086900 and \$6 to fund 510000.)**

- (1) **The Fee Is Assessed Per Filing.** If an amendment contains more than one change to the list of creditors, the clerk may charge only one \$26 fee. The clerk must charge a fee to add creditors, delete creditors, change the amount of a debt, or change the classification of a debt.
- (2) **No Fee to Change Addresses.** No fee is due to change the address of a listed creditor. Federal Rule of Bankruptcy Procedure 2002(g) provides that creditors may designate the address to which notices must be sent occasionally causing a change to the original schedule. The clerk must amend only the mailing matrix in such circumstances; schedules need no amendments if the only change is an updated address.
- (3) **No Fee Charged to Add Attorney.** No fee is due to add the name and address of an attorney for a creditor already listed on the original schedules, so that the attorney can receive copies of notices. The attorney is added as an agent for a creditor already included on the schedule.
- (4) **Waivers for Good Cause.** The Bankruptcy Court Miscellaneous Fee Schedule permits the judge "for good cause [to] waive the charge in any case." This provision requires an individual finding in each case. It provides no authority

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<sup>265</sup>The Judicial Conference modified this fee three times. First, effective January 1, 1998, the Conference eliminated the requirement that the clerk ascertain whether notice of the filing was sent to creditors before assessing the fee. The Conference determined that this notice requirement was unduly burdensome. Second, at its March 2001 session, the Conference made clear that the fee applied to the matrices and mailing lists of creditors. Third, it increased the fee for inflation at its September 2003 session effective November 1, 2003.

to a court to abolish the fee by granting a blanket waiver by local rule or general order. The court may designate the factors in a local rule that will be considered good cause for a waiver, but the burden must remain on the party to make a showing of good cause. A blanket waiver vitiates the debtor's incentive to furnish complete and accurate schedules and lists at the outset of the case, which is the purpose of this fee. Such a blanket waiver also deprives the government of reimbursement for the services it must perform when an amendment is filed. An attorney's ignorance of the fee requirement usually fails the test for good cause.<sup>266</sup>

- (5) **Exception for Chapter 13 Cases Converted to Chapter 7.** No fee is due when a debtor files a schedule of post-petition debts after converting from chapter 13 to chapter 7. The Federal Rules of Bankruptcy Procedure require the supplemental filing.<sup>267</sup> The Judicial Conference considers the schedule of post-petition debts a supplemental filing, in contrast to an amendment, not only because the Federal Rules require it, but also because the debtor is unable to schedule these debts on the original filing.<sup>268</sup> Furthermore, charging a fee may discourage the debtor from complying with the rule.

(6) **Accounting - 28 U.S.C. § 1930(b)(4).**

- (a) The clerk deposits \$20 to the Treasury's general fund account 086900, and \$6 to the Special Fund for the Judiciary, account 510000.

General Fund	\$20.00	31 U.S.C. § 3302(b)	086900
Special Fund for the Judiciary	\$ 6.00	P.L. 101-162, 101-121; P.L. 106-518 (Nov. 13, 2000; 113 Stat. 2410)	510000

- E. **Records Search (Item 5 - Miscellaneous Fee Schedule).** The clerk must charge \$26 per name or per item searched for every search of the bankruptcy court's records. **(Credit \$15 to fund 322360 and \$11 to fund 510000).**

- (1) **Fee Independent of Request for Certification.** The charge applies regardless of whether certification is requested, and the charge applies regardless of whether the answer is in writing. If the clerk makes copies of court documents

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<sup>266</sup>General Counsel letter, March 27, 1989; General Counsel memorandum, October 25, 1988.

<sup>267</sup>Pursuant to Federal Rule of Bankruptcy Procedure 1019(5).

<sup>268</sup>Bankruptcy Judges Division memorandum, October 28, 1992.

in connection with a search, the clerk must charge the copy fee in addition to the search fee. If the clerk certifies the document, the clerk also must charge the certification fee.<sup>269</sup>

- (2) **Application of the Fee.** The fee applies either when the request for information requires an examination of case files to retrieve the information, or when the request fails to identify the documents by an accurate case and docket number. Nevertheless, no fee is due for requests for information readily retrievable through an automated database, docket card, index card, or similar system.
- (3) **Exemption for Federal Agencies.** This fee applies to services for the United States only if the agency can retrieve the information requested electronically.
- (4) **Public Use of Automatic Data Bases Encouraged.** The clerk must provide services to the public. Nevertheless, limited budgets compel each court to balance its obligation to the public with its obligation to the court and the litigants before it. Since automated databases will reduce the resources needed to respond to search requests, the clerk must encourage the public to use them.
- (5) **Accounting - 28 U.S.C. § 1930(b)(5).**

- (a) The clerk deposits \$15.00 to the Treasury's general fund account 322360, and \$11.00 to the Special Fund for the Judiciary, account 510000.

General Fund	\$15.00	31 U.S.C. § 3302(b)	322360
Special Fund for the Judiciary	\$11.00	P.L. 101-162, 101-121; P.L. 106-518 (Nov. 13, 2000; 113 Stat. 2410)	510000

- F. **Fee for Filing or Indexing Any Paper Not in a Case or Proceeding for Which a Filing Fee Has Been Paid (Item 7 - Miscellaneous Fee Schedule).** The clerk must charge **\$39** for filing or indexing any paper not associated with a case or proceeding for which a filing fee has been paid, including registering a judgment from another district.<sup>270</sup> **(Credit \$20 to fund 086900 and \$19 to fund 510000).**

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<sup>269</sup>Director's memorandum, July 1, 1993. See the discussions of copy fees, and of the electronic access fee. Exhibit 9 is the Search Fee Guidelines for Bankruptcy Courts. The Judicial Conference approved these guidelines initially in 1993, and revised them in 1997. See Director's memorandum, November 24, 1997.

<sup>270</sup> At its March 2001 session, the Judicial Conference removed specific examples of when the fee should apply to state simply that the fee shall apply when filing or indexing a document not in a case or proceeding for which a filing fee has already been paid.

- (1) **Application of the Fee:** The clerk must charge the fee upon receiving:
- (a) a request to register a judgment entered in another district,
  - (b) a motion for a protective order, or to quash a subpoena issued in a case pending in another district,
  - (c) a request to perpetuate testimony concerning a potential adversary proceeding under Federal Rule of Bankruptcy Procedure 7027,
  - (d) a request to register a discharge order under Federal Rule of Bankruptcy Procedure 4004(f), or
  - (e) any other request to register with the court a document not in a case or proceeding.
- (2) **Foreign Judgments.** A foreign judgment is a judgment from outside the bankruptcy court's own district. The fee to register a foreign judgment covers any clerical services associated with enforcing the judgment, such as issuing writs of execution.
- (3) **Dual Registrations of Judgments.** Federal Rule of Bankruptcy Procedure 5003(c) provides that a prevailing party may request a district court clerk keep and index judgments or orders affecting title to or liens upon real or personal property, and judgments or orders for the recovery of money or property with the civil judgments of the district court. Accordingly, a party may register a foreign judgment with the bankruptcy court and, having paid a fee to the bankruptcy clerk, request the district court clerk register the judgment with the district court without payment of a second fee. In all other instances that some party requests that the clerks in both the district and the bankruptcy courts register a foreign judgment, each clerk must charge a separate \$20 filing/indexing fee.
- (4) **Accounting - 28 U.S.C. § 1930(b)(7).**
- (a) The clerk deposits \$20.00 to the Treasury's general fund account 086900, and \$19 to the Special Fund for the Judiciary, account 510000.

General Fund	\$20.00	31 U.S.C. § 3302(b)	086900
Special Fund for the Judiciary	\$19.00	P.L. 101-162, 101-121; P.L. 106-518 (Nov. 13, 2000; 113 Stat. 2410)	510000

- G. **Microfilm (Item 12 - Miscellaneous Fee Schedule).** The clerk must charge **\$5** for each microfiche sheet of film or microfilm jacket copy of any court record. (**Credit \$3 to fund 322350 and \$2 to fund 510000**).

General Fund	\$3.00	31 U.S.C. § 3302(b)	086900
Special Fund for the Judiciary	\$2.00	P.L. 101-162, 101-121; P.L. 106-518 (Nov. 13, 2000; 113 Stat. 2410)	510000

- H. Retrieval from Offsite Storage (Item 13 - Miscellaneous Fee Schedule.)** The clerk must charge **\$45** to retrieve a record from a Federal Records Center, National Archives, or other storage location removed from the court's place of business. **(Credit fund \$25 to 322360 and \$20 to fund 510000.)**

**(1) Accounting.**

General Fund	\$25.00	31 U.S.C. § 3302(b)	322360
Special Fund for the Judiciary	\$20.00	P.L. 101-162, 101-121; P.L. 106-518 (Nov. 13, 2000; 113 Stat. 2410)	510000

- (2) Reopened Cases.** If the clerk must retrieve a file because the court reopened the case, the clerk must collect a retrieval fee from the party that requested the reopening even when no reopening fee is charged. The clerk must collect the fee for each case file retrieved.
- (3) Consolidated Cases.** If the court consolidates several cases for disposition but, the case files are filed separately with the Federal Records Center or National Archives, the clerk must collect a fee for each file separately stored.
- (4) Premature Retirements.** If the clerk retires a file early (*i.e.*, before the time for filing an appeal has expired) due to a shortage of space in the courthouse, no fee is due.
- (5) Referrals to Storage Facilities.** Before the clerk refers requests for case files directly to the storage facility, he or she must first contact the storage facility to insure it can accommodate walk-in requests to review and to photocopy records. Many Federal Records Centers have neither the facilities, nor the staff to accommodate walk-in requests. Alternatively, all Federal Records Center can process on-line requests for copies of archived documents.
- I. Returned Check Fee (Item 14 - Miscellaneous Fee Schedule.)** The clerk must collect **\$45** when a bank returns a check for insufficient funds - 28 U.S.C. § 1930(b)(14). **(Credit \$25 to fund 322360 and \$20 to fund 510000.)**

(1) **Accounting**

General Fund	\$25.00	31 U.S.C. § 3302(b)	322360
Special Fund for the Judiciary	\$20.00	P.L. 101-162, 101-121; P.L. 106-518 (Nov. 13, 2000; 113 Stat. 2410)	510000

- (2) **Comment:** The clerk may waive the fee if the clerk resubmits the check and it then clears. When a trustee closes an estate's bank account 90 days after distributing all payments to creditors, and then pays the remaining balance to the clerk, normally no fee is due from the trustee if the bank errs by first paying a stale check, and then refusing the check given to the clerk for insufficient funds. If the trustee's checks bore the notice "void after 90 days," the bank paid the stale check in error, and the clerk should waive the fee.

- J. Chapter 15 Petitions (Item 16 - Miscellaneous Fee Schedule.)** For a petition under chapter 15 of the United States Bankruptcy Code, the clerk must collect **\$1,000**.<sup>271</sup> Additionally, the clerk must collect the **\$39** administrative fee.<sup>272</sup> **(Credit \$500 to fund 086900, \$500 to fund 510000, and the \$39 administrative fee to fund 510000.)**

(1) **Accounting (filing fee)**

General Fund	\$500	31 U.S.C. § 3302(b)	086900
Special Fund for the Judiciary	\$500	Federal Court Improvement Act of 2000 [Sec 102]	510000

(2) **Accounting (administrative fee)**

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<sup>271</sup>Congress created chapter 15 proceedings with the Bankruptcy Reform Act of 2005. The Judicial Conference changed the fee to \$1,000 in September, 2005. The Conference changed this item previously in 1997:

Filing a Petition Ancillary to a Foreign Proceeding. Item 17 [now item 16] requires a fee of \$500 for filing a petition ancillary to a foreign proceeding. This fee should be increased to the same amount as the fee for commencing a chapter 11 bankruptcy case, which is currently \$1,000, contingent upon the enactment of legislation permitting the judiciary to retain the resulting increase. In addition, the fee should not reference a specific amount, but instead track the chapter 11 filing fee set forth at 28 U.S.C. § 1930(a)(3).

That authority was obtained from Congress in the Federal Court Improvement Act of 2000 [Sec 102].

<sup>272</sup>Item 8 - Miscellaneous fee schedule. See Part B ¶1.C.

Special Fund for the Judiciary	\$39	PL 101-162 § 404(a) PL 106-518 (Nov. 13, 2000, 114 Stat. 22410)	510000
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- K. Fee for Providing Local Rules (Item 17 - Miscellaneous Fee Schedule.)** The court may collect fees commensurate with the cost of providing copies of the local rules of court. The court may also distribute copies of the local rules without charge, and may provide them either in hard copy or in an electronic format. **(Credit fund 322340.)**
- L. Registry of Funds Fee (Item 18 - Miscellaneous Fee Schedule.)** The clerk must charge for handling the registry funds deposited with the court. The clerk assesses the charge from interest earnings according to the fee schedule issued by the Director of the Administrative Office of the United States Courts. **(Credit fund 510100.)**<sup>273</sup>
- M. Repealed Provisions.** The Judicial Conference repealed items 10,<sup>274</sup> 11,<sup>275</sup> and 15<sup>276</sup> of the Miscellaneous Fee Schedule. These items were filled when the Miscellaneous Fee Scheduled was renumbered by the Courts Improvement Act of 2000.

## Part L. Fee Schedule for Electronic Public Access.

- 1. Applying the Fee.** This fee applies to all public access electronic record retrieval systems in the courts, including (but not limited to) PACER. Effective October 1, 1993, the Judicial Conference eliminated the exemption for federal agencies. The fee applies to all federal agencies except those funded by judiciary appropriations, such as bankruptcy administrators. To both mitigate the pressure on clerks' office operations that could result from eliminating the exemption from fees and to encourage federal agencies to use either remote terminals or

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<sup>273</sup>For a detailed discussion of this fee and the proper method of calculation see the Guide to Judiciary Policies and Procedures (Guide), Vol. I, Ch. VII, Part J.6.

<sup>274</sup>Effective January 1, 1998, the Judicial Conference repealed the fee for processing claims. The Conference found this fee was more burdensome to collect than the value of the revenue collected. See Director's memorandum, November 24, 1997.

<sup>275</sup>Effective January 1, 1998, the Judicial Conference repealed the fee for transcribing a record of any proceeding by a regularly employed member of the bankruptcy court staff. The Judicial Conference repealed this fee finding no courts were providing these services. See Director's memorandum, November 24, 1997.

<sup>276</sup>At its March 1997 meeting, the Judicial Conference eliminated the fee for mailing labels because the courts were no longer providing this service.



the public access terminals in clerks' offices to access the files electronically,<sup>277</sup> the Judicial Conference also resolved that "where electronic access is available, in order to encourage the use of electronic access both from remote locations and from public access terminals in clerks' offices," the clerk will assess fees against federal agencies for copying court records and for performing searches.<sup>278</sup>

2. **Access Fees.** The Judicial Conference created two fees for accessing court records electronically. The fee charged depends upon whether dial up service, or a federal judiciary Internet site is used.

**A. Kinds of Fees**

- (1) **Dial Up Service.** The Judicial Conference established, and the PACER Service Center collects, a **60 cents per minute** fee for electronic access to the court's data via dial up service.<sup>279</sup>
- (2) **Federal Judiciary Internet Site.** For public users obtaining information through a federal judiciary Internet site, the fee is **eight cents per page<sup>280</sup> with the total for any document (excluding transcripts of court proceedings) not to exceed the fees for thirty pages.** Exhibits are treated as separate documents for purposes of this charge. The fee cap applies to case specific reports and is applied as part of the regular PACER billing process.<sup>281</sup>

- B. One Free Copy to Parties.** Attorneys of record and parties in a case (including *pro se* litigants) receive one free electronic copy of all documents filed electronically if receipt is required by law, or directed by the filer.

- C. Charges Must Exceed \$10 Each Calendar Year.** No fee is due under this provision until an account holder accrues charges of more than \$10 in a calendar year.

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<sup>277</sup>See Director's memorandum, July 1, 1993 and the following discussion of copy, search, and electronic access fees. For a more complete discussion of which entities are "the United States" for purposes of an exemption from fees, see the "Adversary Proceedings Initiated by United States."

<sup>278</sup>Director's memorandum, July 1, 1993. See the discussion of copy and search fees.

<sup>279</sup>The Judicial Conference modified the electronic access fee in March 1991, March 1993 (eliminating the federal exemption), March 1995 (reducing the fee to \$.75 per minute), and March 1996 (reducing the fee to \$.60 per minute).

<sup>280</sup>The Judicial Conference increased this fee effective January 1, 2005 from seven cents to eight cents at its September 21, 2004 session.

<sup>281</sup>Per Judicial Conference action at its March 2002 session. See Director's memorandum, April 11, 2002, and M. Stickney memorandum, May 6, 2002.

3. **Printing Electronic Records.** The clerk must collect **ten cents per page** for printing copies of any record or document accessed electronically at a public terminal in the courthouse. This fee applies to services rendered on behalf of the United States if the record requested is available remotely through the court's electronic access system.
  4. **PACER Searches.** For every search of court records conducted by the PACER Service Center, **\$20**.
  5. **Exemptions Allowed.** There are two classes of exemptions.
    - A. **Federal Agencies or Programs Funded from Judiciary Appropriations.** No fees shall be charged to federal agencies or programs funded from judiciary appropriations, including, but not limited to, agencies, organizations, and individuals providing services authorized by the Criminal Justice Act, 18 U.S.C. § 3006A,<sup>282</sup> and bankruptcy administrator programs.
    - B. **Court's Discretion.** The court has discretion to grant exemptions in appropriate circumstances. Upon motion, a person or class of persons may seek exemption from the fees by demonstrating that an exemption is necessary to avoid unreasonable burdens and to promote public access.<sup>283</sup> Upon a showing of cause, the courts may exempt the following types of PACER customers from fees:

[I]ndigents; bankruptcy case trustees; individual researchers associated with academic institutions; courts; Section 501(c)(3) not-for-profit organizations; and pro bono ADR neutrals. Exemptions may be granted for a specific period of time, may be revoked at the discretion of the court granting the exemption and are only for access related to the purpose for which the exemption was given.<sup>284</sup>
- (1) **Judicial Conference Guidelines.** The Judicial Conference approved the following note clarifying the judiciary's policy with respect to discretionary exemptions from this fee:

Courts should not exempt local, state or federal  
government agencies, members of the media,

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<sup>282</sup>Attorneys appointed under the CJA and related statutes are automatically exempt from paying electronic access fees for work related to CJA cases. See N. Augustyn's memorandum, May 17, 2002. See Chapter I, Volume VII, Guide to Judiciary Policies and Procedures.

<sup>283</sup>See JCUS-SEP 03, p. 14, Director's memorandum, October 19, 1992.

<sup>284</sup>See Exhibit 3, the Electronic Public Access Fee Schedule.

attorneys or others not members of one of the groups listed above. Exemptions should be granted as the exception, not the rule. A court may not use this exemption language to exempt all users. An exemption applies only to access related to the case or purpose for which it was given.<sup>285</sup>

- (2) **Procedure to Apply for Exemption.** Courts registered with the billing center in San Antonio must send them a copy of the order granting the exemption as soon as it is entered to prevent the center from billing the party exempted.<sup>286</sup>

**C. No Standing Exemption for the United States.** The United States has no standing exemption from this fee.<sup>287</sup>

6. **The Clerk's Role.** With the exception of the fee for printing electronic records from the public terminal, the clerk has no role in collecting the fee; the PACER Service Center in San Antonio handles these collections.
7. **Accounting.**<sup>288</sup> The clerk deposits the print fee to the Judiciary Information Technology Fund. **(Credit fund 5114CR.)**

<b>Printing Electronic Records</b>	<b>ten cents per page</b>	<b>§ 303 of PL 102-140</b>	<b>Fund 5114CR</b>
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<sup>285</sup>See Exhibit 3, the Electronic Public Access Fee Schedule.

<sup>286</sup>Director's memorandum, July 1, 1993.

<sup>287</sup>Exhibit 3 is the Judicial Conference advisory note clarifying the judiciary's policy with respect to exemptions from this fee.

<sup>288</sup>The PACER Service Center deposits the other EPA fees to the Judiciary Information Technology Fund, **fund 5114**, as follows:

<b>Dial Up Service</b>	<b>60 cents per minute</b>	<b>§ 303 of PL 102-140</b>	<b>Fund 5114PF</b>
<b>Federal Judiciary Internet Site</b>	<b>eight cents per page</b>	<b>§ 303 of PL 102-140</b>	<b>Fund 5114PF</b>
<b>PACER Searches</b>	<b>\$20</b>	<b>§ 303 of PL 102-140</b>	<b>Fund 5114PF</b>

8. **Audit Policy.** The Judicial Conference directed that reviewing a court's compliance with the EPA Fee Schedule and its exemptions should be included in the court's financial audit.<sup>289</sup>

## **Part M. Fines and Damages**

BAPCPA changed the Code<sup>290</sup> permitting the courts to levy certain fines and award certain damages. and the courts may award them to either the petitioner or the government. If the court awards these fines or damages to the petitioner, and the defendant pays them into the court rather than to the petitioner directly, the clerk should run the funds through **6855TT**, a suspense account. If the award is in favor of the government, in a U.S. trustee district, the funds must go to the U.S trustee system, so the clerk must credit fund **5073XX**. In bankruptcy administrator districts, the clerk must credit fund **510000**, the judiciary's general fee account.

## **Part N. Fees for Bankruptcy Act Cases.**

The *Bankruptcy Forms Manual, Forms and Instructions for the Courts*, (1988) Chapter V contains the charges in Bankruptcy Act cases. Separate charges apply, depending upon the chapter under which the case is closed, and whether the court confirmed a plan. The case closing instructions for cases under each chapter of the Bankruptcy Act include instructions for calculating the charges.

As part of the Bankruptcy Code, the Congress imposed a maximum of \$100,000 on the amount that could be charged for the Referees' Salary and Expense Fund in a Chapter XI case.<sup>291</sup> In 1984, Congress set a maximum charge of \$200,000 for the Referees' Salary and Expense Fund in a Chapter VII case. In 1984, Congress abolished the Referees' Salary and Expense Fund as a separate account in the Treasury.<sup>292</sup> Accordingly, the clerk credits funds collected for the Referees' Salary and Expense Fund to the general fund of the Treasury. (**fund 322360**).

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<sup>289</sup>JCUS-SEPT 03, p.14.

<sup>290</sup>Creating 11 U.S.C. § 110(h), (i), and (l).

<sup>291</sup>Bankruptcy Reform Act of 1978, Pub.L.No. 95-598, § 403(e), 92 Stat. 2683 (1978).

<sup>292</sup>Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub.L.No. 98-353, § 382, 97 Stat. 364 (1984).

## ATTACHMENTS

### EXHIBIT 1 28 U.S.C. § 1930

#### **§ 1930. Bankruptcy Fees**

(a) The parties commencing a case under title 11 shall pay to the clerk of the district court or the clerk of the bankruptcy court, if one has been certified pursuant to section 156(b) of this title, the following filing fees:

- (1) For a case commenced under
  - (A) chapter 7 of title 11, \$245; and
  - (B) chapter 13 of title 11, \$235.

(2) For a case commenced under chapter 9 of title 11, equal to the fee specified in paragraph (3) for filing a case under chapter 11 of title 11. The amount by which the fee payable under this paragraph exceeds \$300 shall be deposited in the fund established under section 1931 of this title.

(3) For a case commenced under chapter 11 of title 11 that does not concern a railroad, as defined in section 101 of title 11, \$1,000.

(4) For a case commenced under chapter 11 of title 11 concerning a railroad, as so defined, \$1,000.

(5) For a case commenced under chapter 12 of title 11, \$200.

(6) In addition to the filing fee paid to the clerk, a quarterly fee shall be paid to the United States trustee, for deposit in the Treasury, in each case under chapter 11 of title 11 for each quarter (including any fraction thereof) until the case is converted or dismissed, whichever occurs first. The fee shall be \$250 for each quarter in which disbursements total less than \$15,000; \$500 for each quarter in which disbursements total \$15,000 or more but less than \$75,000; \$750 for each quarter in which disbursements total \$75,000 or more but less than \$150,000; \$1,250 for each quarter in which disbursements total \$150,000 or more but less than \$225,000; \$1,500 for each quarter in which disbursements total \$225,000 or more but less than \$300,000; \$3,750 for each quarter in which disbursements total \$300,000 or more but less than \$1,000,000; \$5,000 for each quarter in which disbursements total \$1,000,000 or more but less than \$2,000,000; \$7,500 for each quarter in which disbursements total \$2,000,000 or more but less than \$3,000,000; \$8,000 for each quarter in which disbursements total \$3,000,000 or more but less than \$5,000,000; \$10,000 for each quarter in which disbursements total \$5,000,000 or more. The fee shall be payable on the last day of the calendar month following the calendar quarter for which the fee is owed.

An individual commencing a voluntary case or a joint case under title 11 may pay such fee in installments. For converting, on request of the debtor, a case under chapter 7, or 13 of title 11, to a case under chapter 11 of title 11, the debtor shall pay to the clerk of the district court or the clerk of the bankruptcy court, if one has been certified pursuant to section 156(b) of this title, a fee of the amount equal to the difference between the fee specified in paragraph (3) and the fee specified in paragraph (1).

(b) The Judicial Conference of the United States may prescribe additional fees in cases under title 11 of the same kind as the Judicial Conference prescribes under section 1914(b) of this title.

(c) Upon the filing of any separate or joint notice of appeal or application for appeal or upon the receipt of any order allowing, or notice of the allowance of, an appeal or a writ of certiorari \$5 shall be paid to the clerk of the court, by the appellant or petitioner.

(d) Whenever any case or proceeding is dismissed in any bankruptcy court for want of jurisdiction, such court may order the payment of just costs.

(e) The clerk of the court may collect only the fees prescribed under this section.

(f) (1) Under the procedures prescribed by the Judicial Conference of the United States, the district court or the bankruptcy court may waive the filing fee in a case under chapter 7 of title 11 for an individual if the court determines that such individual has income less than 150 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved and is unable to pay that fee in installments. For purpose of this paragraph, the term “filing fee” means the filing fee required by subsection (a), or any other fee prescribed by the Judicial Conference under subsections (b) and (c) that is payable to the clerk upon the commencement of a case under chapter 7.

(2) The district court or bankruptcy court may waive for such debtors other fees prescribed under subsections (b) and (c).

(3) This subsection does not restrict the district court or bankruptcy court from waiving, in accordance with Judicial Conference policy, fees prescribed under this section for other debtors and creditors.

**EXHIBIT 2**  
**Bankruptcy Court Miscellaneous Fee Schedule**<sup>293</sup>  
[effective October 17, 2005]

Following are fees to be charged for services to be performed by clerks of the bankruptcy courts. No fees are to be charged for services rendered on behalf of the United States, with the exception of those specifically prescribed in items 1, 3, and 5, or to bankruptcy administrators appointed under Public Law No. 99-554, § 302(d)(3)(I). No fees under this schedule shall be charged to federal agencies or programs which are funded from judiciary appropriations, including, but not limited to, agencies, organizations, and individuals providing services authorized by the Criminal Justice Act, 18 U.S.C. § 3006A.

- (1) **Reproducing Records.** For reproducing any record or paper, **\$ .50 per page**. This fee shall apply to paper copies made from either: (1) original documents; or (2) microfiche or microfilm reproductions of the original records. This fee shall apply to services rendered on behalf of the United States if the record or paper requested is available through electronic access. **(322350)**
- (2) **Document Certification and Exemplification.** For certification of any document or paper, whether the certification is made directly on the document or by separate instrument, **\$9. (\$5 to 322360 and \$4 to 510000)** For exemplification of any document or paper, twice the amount of the charge for certification. **(\$10 to 322360 and \$8 to 510000)**
- (3) **Reproducing Recordings of Proceedings.** For reproduction of recordings of proceedings, regardless of the medium, **\$26**, including the cost of materials. This fee shall apply to services rendered on behalf of the United States, if the reproduction of the recording is available electronically. **(\$15 to 322350 and \$11 to 510000)**
- (4) **Amending Schedules and Mailing Lists.** For amendments to a debtor's schedules of creditors, lists of creditors, matrix, or mailing lists, **\$26** for each amendment, provided the bankruptcy judge may, for good cause, waive the charge in any case. No fee is required when the nature of the amendment is to change the address of a creditor or of an attorney for a creditor listed on the schedules or to add the name and address of an attorney for a listed creditor. **(\$20 to 086900 and \$6 to 510000)**
- (5) **Record Searches.** For every search of the records of the bankruptcy court conducted by the clerk of the bankruptcy court or a deputy clerk, **\$26** per name or item searched. This fee shall apply to services rendered on behalf of the United States if the information requested is available through electronic access. **(\$15 to 322360 and \$11 to 510000)**

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<sup>293</sup>Titles and fund codes are inserted for convenience.

- (6) **Filing Complaints.**<sup>294</sup> For filing a complaint, a fee shall be collected in the same amount as the filing fee prescribed in 28 U.S.C. § 1914(a) for instituting any civil action other than a writ of habeas corpus. **[Currently, the fee is \$250.]** If the United States, other than a United States trustee acting as a trustee in a case under title 11, or a debtor is the plaintiff, no fee is required. If a trustee or debtor in possession is the plaintiff, the fee should be payable only from the estate and to the extent there is any estate realized. If a child support creditor or its representative is the plaintiff, and if such plaintiff files the form required by § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required. **(\$120 to 086900 and \$130 to 510000)**
- (7) **Filing and Indexing Foreign Papers.** For filing or indexing any document not in a case or proceeding for which a filing fee has been paid, **\$39. (\$20 to 086900 and \$19 to 510000)**
- (8) **Misc Administrative Fee.** In all cases filed under title 11, the clerk shall collect from the debtor or the petitioner a miscellaneous administrative fee of **\$39**. This fee may be paid in installments in the same manner that the filing fee may be paid in installments, consistent with the procedure set forth in Federal Rule of Bankruptcy Procedure 1006. **(510000)**
- (9) **Chapter 7 Trustee Surcharge.** Upon the filing of a petition under chapter 7 of the Bankruptcy Code, the petitioner shall pay **\$15** to the clerk of the court for payment to trustees serving in cases as provided in 11 U.S.C. § 330(b)(2). An application to pay the fee in installments may be filed in the manner set forth in Federal Rule of Bankruptcy Procedure 1006(b). **(6855TT)**
- (10) **Motions to Convert.** Upon the filing of a motion to convert a case to chapter 7 of the Bankruptcy Code, the movant shall pay **\$15** to the clerk of court for payment to trustees serving in cases as provided in 11 U.S.C. § 330(b)(2). Upon the filing of a notice of conversion pursuant to section 1208(a) or section 1307(a) of the Code, **\$15** shall be paid to the clerk of the court for payment to trustees serving in cases as provided in 11 U.S.C. § 330(b)(2). If the trustee serving in the case before the conversion is the movant, the fee shall be payable only from the estate that exists prior to conversion. **(6855BK)**

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<sup>294</sup>Although the Deficit Reduction Act of 2005 increased the district court civil action fee, at its March session, the Judicial Conference decided to defer raising the adversary proceedings fee, and others, until the Bankruptcy Committee and the Court Administration and Case Management Committee were able to review these fee increases. See Director's memorandum dated March 24, 2006.



- (11) **Motions to Reopen.**<sup>295</sup> For filing a motion to reopen a Bankruptcy Code case, a fee shall be collected in the same amount as the filing fee prescribed by 28 U.S.C. § 1930(a) for commencing a new case on the date of reopening, unless the reopening is to correct an administrative error or for actions related to the debtor's discharge. The court may waive this fee under appropriate circumstances or may defer payment of the fee from trustees pending discovery of additional assets. If payment is deferred, the fee shall be waived if no additional assets are discovered. **(Same as the original filing - see exhibit B-4)**
- (12) **Microfiche.** For each microfiche sheet of film or microfilm jacket copy of any court record, where available, **\$5. (\$3 to 322350 and \$2 to 510000)**
- (13) **Record Retrievals.** For retrieval of a record from a Federal Records Center, National Archives, or other storage location removed from the place of business of the court, **\$45. (\$25 to 322360 and \$20 to 510000)**
- (14) **NSF Checks.** For a check paid into the court which is returned for lack of funds, **\$45. (25 to 322360 and \$20 to 510000)**
- (15) **Docketing Appeals.**<sup>296</sup> For docketing a proceeding on appeal or review from a final judgment of a bankruptcy judge pursuant to 28 U.S.C. § 158(a) and (b), the fee shall be the same amount as the fee for docketing a case on appeal or review to the appellate court as required by Item 1 of the Courts of Appeals Miscellaneous Fee Schedule. A separate fee shall be paid by each party filing a notice of appeal in the bankruptcy court, but parties filing a joint notice of appeal in the bankruptcy court are required to pay only one fee. If a trustee or debtor in possession is the appellant, the fee should be payable only from the estate and to the extent there is any estate realized. **(Credit \$100 to fund 086900 and \$150 to fund 510000)**<sup>297</sup>

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<sup>295</sup>Although the Deficit Reduction Act of 2005 increased the fee for docketing an appeal in the circuit court, at its March session, the Judicial Conference decided to defer raising bankruptcy court appellate docketing fee, and others, until the Bankruptcy Committee and the Court Administration and Case Management Committee were able to review these fee increases. See Director's memorandum dated March 24, 2006.

<sup>296</sup>Although the Deficit Reduction Act of 2005 increased the chapter 7 and chapter 13 filing fees, at its March session, the Judicial Conference decided to defer raising the fee to split, and others, until the Bankruptcy Committee and the Court Administration and Case Management Committee were able to review these fee increases. See Director's memorandum dated March 24, 2006.

<sup>297</sup>In addition to the filing fee under this item, the Judiciary charges a \$39 item 8 administrative fee credited to fund 510000 for filing a petition ancillary. Consequently, the total charge is \$1,039.

- (16) **Chapter 15 Petitions.** For filing a chapter 15 petition, the fee shall be the same amount as the fee for a case commenced under chapter 11 of title 11 as required by 28 U.S.C. § 1930(a)(3). **(Credit \$500 to fund 086900 and \$500 to fund 510000)**
- (17) **Local Rules.** The court may charge and collect fees commensurate with the cost of providing copies of the local rules of court. The court may also distribute copies of the local rules without charge. **(322340)**
- (18) **Registry Funds.** The clerk shall assess a charge for the handling of registry funds deposited with the court, to be assessed from interest earnings and in accordance with the detailed fee schedule issued by the Director of the Administrative Office of the United States Courts. **(510100)**
- (19) **Splitting Cases.**<sup>298</sup> When a joint case filed under § 302 of title 11 is divided into two separate cases at the request of the debtor(s), a fee shall be charged equal to the current filing fee for the chapter under which the joint case was commenced. **(510000)**
- (20) **Misc. Contested Proceedings.** For filing a motion to terminate, annul, modify, or condition the automatic stay provided under § 362(a) of title 11, a motion to compel abandonment of property of the estate pursuant to Rule 6007(b) of the Federal Rules of Bankruptcy Procedure, or a motion to withdraw the reference of a case or proceeding under 28 U.S.C. § 157(d), a fee shall be \$150 **(510000)**. No fee is required for a motion for relief from the co-debtor stay or for a stipulation for court approval of an agreement for relief from the stay. If a child support creditor or its representative is the movant, and if such movant files the form required by § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.
- (21) **Docketing Cross Appeals.**<sup>299</sup> For docketing a cross appeal from a bankruptcy court determination, the fee shall be the same amount as the fee for docketing a case on appeal or review to the appellate court as required by Item 1 of the Courts of Appeals Miscellaneous Fee Schedule. If a trustee or debtor in possession is the appellant, the fee should be payable only from the estate and to the extent there is any estate realized. **(510000)**

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<sup>298</sup>Although the Deficit Reduction Act of 2005 increased the chapter 7 and chapter 13 filing fees, at its March session, the Judicial Conference decided to defer raising the fee to split, and others, until the Bankruptcy Committee and the Court Administration and Case Management Committee were able to review these fee increases. See Director's memorandum dated March 24, 2006.

<sup>299</sup>Although the Deficit Reduction Act of 2005 increased the fee for docketing an appeal in the circuit court, at its March session, the Judicial Conference decided to defer raising bankruptcy court appellate docketing fee, and others, until the Bankruptcy Committee and the Court Administration and Case Management Committee were able to review these fee increases. See Director's memorandum dated March 24, 2006.

**EXHIBIT 3**  
**Electronic Public Access Fee Schedule** (eff. 1/1/05)

As directed by Congress, the Judicial Conference has determined that the following fees are necessary to reimburse expenses incurred by the judiciary in providing electronic public access to court records. These fees shall apply to the United States unless otherwise stated. No fees under this schedule shall be charged to federal agencies or programs which are funded from judiciary appropriations, including, but not limited to, agencies, organizations, and individuals providing services authorized by the Criminal Justice Act, 18 U.S.C. § 3006A, and bankruptcy administrator programs.

- I. For electronic access to court data via dial up service: sixty cents per minute. For electronic access to court data via a federal judiciary Internet site: eight cents per page, with the total for any document, docket sheet, or case-specific report not to exceed the fee for thirty pages— provided however that transcripts of federal court proceedings shall not be subject to the thirty-page fee limit. Attorneys of record and parties in a case (including *pro se* litigants) receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. No fee is owed under this provision until an account holder accrues charges of more than \$10 in a calendar year. Consistent with Judicial Conference policy, courts may, upon a showing of cause, exempt indigents, bankruptcy case trustees, individual researchers associated with educational institutions, courts, section 501(c)(3) not-for-profit organizations and pro bono ADR neutrals from payment of these fees. Courts must find that parties from the classes of persons or entities listed above seeking exemption have demonstrated that an exemption is necessary in order to avoid unreasonable burdens and to promote public access to information. Any user granted an exemption agrees not to sell for profit the data obtained as a result. Exemptions may be granted for a definite period of time and may be revoked at the discretion of the court granting the exemption.
- II. For printing copies of any record or document accessed electronically at a public terminal in the courthouse: ten cents per page. This fee shall apply to services rendered on behalf of the United States if the record requested is remotely available through electronic access.
- III. For every search of court records conducted by the PACER Service Center, \$20.

**JUDICIAL CONFERENCE POLICY NOTES**

Courts should not exempt local, state or federal government agencies, members of the media, attorneys or others not members of one of the groups listed above. Exemptions should be granted as the exception, not the rule. A court may not use this exemption language to exempt all users. An exemption applies only to access related to the case or purpose for which it was given.

The electronic public access fee applies to electronic court data viewed remotely from the public records of individual cases in the court, including filed documents and the docket sheet. Electronic court data may be viewed free at public terminals at the courthouse and courts may provide other local court information at no cost. Examples of information that can be provided at no cost include: local rules, court forms, news items, court calendars, opinions, and other information – such as court hours, court location, telephone listings – determined locally to benefit the public and the court.

**EXHIBIT 4**  
**Schedule of Filing Fees for Cases Under the**  
**Bankruptcy Act of 1898 (1)**

Straight Bankruptcy Cases	
Chapters I-VII (§§ 40c(1), 48c, 52a)	\$ 50.00
Railroad Reorganizations	
Section 77 (§ 77(a))	150.00
Municipal Debt	
Chapter IX (§ 85(c))	100.00
Corporate Reorganization	
Chapter X (§ 132)	
If no bankruptcy proceeding is pending	120.00
If a bankruptcy proceeding is pending	70.00
Arrangements	
Chapter XI (§§ 324(2), 40c(1), 48c, 52a)	50.00
Real Property Arrangements	
Chapter XII (§§ 424(2), 40c(1), 48c, 52a)	50.00
Wage Earner Plans	
Chapter XIII (§ 624(2))	15.00

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- (1) This filing fee should be collected when a case is reopened unless the case is reopened to correct an administrative error, or for actions relating to the discharge.

**EXHIBIT 5**  
**Summary of Allocation of Filing Fees,**  
**Administrative Fee, and Trustee Surcharge.**

<u>CHAPTER</u>	7	13	11 (non-RR)	11 RR	12	9
<u>FUND</u>						
U.S. (*) Trustee (5073XX)	89.01	42.50	550	500	100	
Judiciary (510000)	63.51	52.50	250	-	-	700
Trustee Deposit (6855TT)	45.00	-	-	-	-	-
Treasury (086900)	22.48	55.00	200	500	100	300
Treasury (086400)	25.00	85.00				
Judiciary (510000)	39.00	39.00	39	39	39	39
Trustee Deposit (6855TT)	15.00					
<u>TOTAL</u>	299.00	274.00	1,039	1,039	239	1,039

(\*) §302(d)(3)(G), Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub.L.No. 99-554, 100 Stat. 3119, enacted October 27, 1986, provides that, in the judicial districts in Alabama and North Carolina, the U.S. Trustee fee is to be deposited in the general receipts of the Treasury.

## **EXHIBIT 6**

### **Judicial Conference of the United States Interim Procedures Regarding the Chapter 7 Fee Waiver Provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 Promulgated August 11, 2005.**

The Judicial Conference of the United States promulgates these interim procedures to assist district courts and bankruptcy courts with implementing the fee waiver provisions set forth in Section 418 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Pub. L. No. 109-8, 199 Stat. 23), and codified at 28 U.S.C. § 1930(f)(1-3).

#### **1. The Filing Fee Waiver Application and Initiation of the Chapter 7 Case**

- A.** In lieu of paying the filing fee or filing an installment application, an individual chapter 7 debtor may file an application for waiver of the filing fee along with the bankruptcy petition. The application must conform substantially to Official Form 3B.<sup>300</sup> A defective or otherwise deficient filing fee waiver application should be processed according to the court's standard operating procedures for processing defective or otherwise deficient pleadings and papers.
- B.** When a chapter 7 petition in an individual debtor case is accompanied by a filing fee waiver application, the court should initiate and process the case in the same manner as other individual chapter 7 cases.

#### **2. Judicial Determination of Filing Fee Waiver Applications**

##### **A. Standard of Eligibility**

- 1. The district court or the bankruptcy court may waive the chapter 7 filing fee for an individual debtor who: (a) has income less than 150 percent of the poverty guidelines last published by the United States Department of Health and Human Services

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<sup>300</sup>In its Interim Rule package responding to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, the Advisory Committee on Bankruptcy Rules amended Bankruptcy Rule 1006 to add a new subdivision (c), which sets forth the following basic procedure for filing an application for waiver of the filing fee.

**(c) Waiver of filing fee.** A voluntary petition filed by an individual shall be accepted for filing if accompanied by the debtor's application requesting a waiver under 28 U.S.C. § 1930(f), prepared as prescribed by the appropriate Official Form.

(DHHS) applicable to a family of the size involved;<sup>301</sup> and (b) is unable to pay that fee in installments.

2. The DHHS guidelines defines poverty guidelines separately for: (a) the 48 contiguous states and the District of Columbia; (b) Alaska; and (c) Hawaii. It does not define guidelines for Puerto Rico, the U.S. Virgin Islands, American Samoa, Guam, the Republic of the Marshall Islands, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and Palau. For these areas, the guidelines for the 48 contiguous states and the District of Columbia should be used. The Administrative Office of the United States Courts will post the last published guidelines and the 150 percent comparison levels on the J-Net.
3. The income for comparison to the poverty guidelines is the "Total Combined Monthly Income" as reported (or as will be reported) on Line 16 of Schedule I. Non-cash governmental assistance (such as food stamps or housing subsidies) is not included.<sup>302</sup> The income of a spouse is included whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. The income of any other family member listed on Schedule I as a dependent also is included.
4. "Family size" is defined as the debtor(s), the debtor's spouse (unless the spouses are separated and a joint petition is not being filed), and any dependents listed on Schedule I.<sup>303</sup>
5. The district court or the bankruptcy court should consider the totality of the circumstances in determining whether the debtor is unable to pay the fee in

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<sup>301</sup>The statute provides, in part, that the court may waive the filing fee "if the court determines that such individual has income less than 150 percent of the income official poverty line (as defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved ...." These procedures interpret this statutory language to refer to the poverty guidelines updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. § 9902(2). The phrase "income official poverty line as defined by the Office of Management and Budget" refers to the poverty thresholds set by the Census Bureau. OMB has never issued poverty thresholds or guidelines, but in August 1969, the Bureau of the Budget (the predecessor of OMB) did issue a document designating the Census Bureau poverty thresholds as the federal government's official statistical definition of poverty. Section 673(2) of the Omnibus Budget Reconciliation Act of 1981 (codified in 42 U.S.C. § 9902(2)) requires the Secretary of Health and Human Services to update the poverty guidelines annually. The thresholds are mentioned in that legislative section because they are the starting point from which the poverty guidelines are calculated. The Bureau of Census poverty thresholds are typically used for statistical purposes whereas the DHHS poverty guidelines are used administratively to determine program eligibility.

<sup>302</sup>The DHHS does not publish a standard definition of income, leaving the determination of that definition to individual program administrators. Some programs use before-tax income and others use after-tax income. These procedures adopt the definition that is reasonable for the bankruptcy context.

<sup>303</sup>Similarly, the DHHS does not publish a standard definition of "family unit," so these JCUS procedures adopt a definition that is reasonable for the bankruptcy context.



installments as provided for in amended Section 1930(f)(1) of title 28, United States Code. Official Form 3B elicits information relevant to this determination. A debtor is not disqualified for a waiver of the filing fee solely because the debtor has paid (or promised to pay) a bankruptcy attorney, bankruptcy petition preparer, or debt relief agency in connection with the filing.<sup>304</sup>

6. In any determination regarding a filing fee waiver application, the debtor has the burden of showing that the application should be granted.

#### **B. Initial Court Procedures**

1. The court should promptly determine whether the application should be granted, denied, or set for early hearing, on notice to the United States trustee or bankruptcy administrator, the case trustee, the debtor, and, if applicable, the attorney for the debtor. The order should be transmitted to the United States trustee or bankruptcy administrator, the case trustee, the debtor, and, if applicable, the attorney for the debtor.
2. Any order denying a filing fee waiver application should give the debtor a reasonable time (generally, 10 days) in which either to pay the fee in full or begin making installment payments. An order denying the fee waiver application should set forth an installment payment schedule to eliminate supplemental work for the clerk's office. It also should advise the debtor that failure to pay the fee or make timely installment payments may lead to dismissal of the case. A standard order is included with the Official Form.
3. If a debtor files an application to pay the filing fee in installments and later applies for a waiver of the filing fee, the court may waive any unpaid balance of the filing fee, if the circumstances so warrant.

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<sup>304</sup>In its Interim Rule package responding to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, the Advisory Committee on Bankruptcy Rules amended Fed. R. Bankr. P. 1006(b)(1) to delete the sentence requiring a statement in the installment fee application that the debtor has not paid an attorney or other person in connection with the case. Inability to pay the filing fee in installments is one of the requirements for a fee waiver. If the attorney payment prohibition were retained, payment of an attorney's fee would render many debtors ineligible for installment payments and thus enhance their eligibility for the fee waiver. Deletion of this prohibition from the rule, which was not statutorily required, ensures that debtors who have the financial ability to pay the fee in installments will do so rather than request a waiver. The Advisory Committee also amended Fed. R. Bankr. P. 1006(b)(3) to conform with the changes to Fed. R. Bankr. P. 1006(b)(1). The change is meant to clarify that subdivision (b)(3) refers to payments made after the debtor has filed the bankruptcy case and after the debtor has received permission to pay the fee in installments. Otherwise, that subdivision may conflict with the intent and effect of the amendments to subdivision (b)(1). In the installment application, debtors must certify they will not make additional payment or transfer any additional property to an attorney or other person for services in connection with the case until the filing fee is paid in full.

4. If a case is converted from chapter 13 to chapter 7, the court may waive any unpaid balance on the filing fee, if the circumstances described in II. A. are present. Note that Section 418 of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 defines "filing fee" to include any fee prescribed by the Judicial Conference under 28 U.S.C. § 1930(b) and (c) that is payable to the clerk upon the commencement of a case under chapter 7, and therefore includes the \$15 chapter 7 trustee fee in the miscellaneous fee schedule.

**2. Developments in the Chapter 7 Case**

- A. If the filing fee of an individual chapter 7 debtor is waived and that debtor's case is later converted to a case under chapter 13, the debtor must pay the full chapter 13 filing fee. The conversion order should give the debtor a reasonable time (generally, 10 days) in which either to pay the fee in full or begin making installment payments.
- B. The court may vacate an order waiving the filing fee if developments in the case or administration of the estate demonstrate that the waiver was unwarranted. See Fed. R. Bankr. P. 9023 and 9024; section 105(a) of the Bankruptcy Code.

3. **Waiver of Additional Fees Under 28 U.S.C. §§ 1930(b) and (c).** Other fees scheduled by the Judicial Conference under 28 U.S.C. §§ 1930(b) and (c) may be waived in the discretion of the bankruptcy court or district court for individual debtors whose filing fee has been waived.

**Form B3B(10/05):**

**APPLICATION FOR WAIVER OF THE CHAPTER 7 FILING FEE FOR INDIVIDUALS WHO CANNOT PAY THE FILING FEE IN FULL OR IN INSTALLMENTS**

The court fee for filing a case under chapter 7 of the Bankruptcy Code is \$274. If you cannot afford to pay the full fee at the time of filing, you may apply to pay the fee in installments. A form, which is available from the bankruptcy clerk's office, must be completed to make that application. If your application to pay in installments is approved, you will be permitted to file your petition, completing payment of the fee over the course of four to six months.

If you cannot afford to pay the fee either in full at the time of filing or in installments, then you may request a waiver of the filing fee by completing this application and filing it with the Clerk of Court. A judge will decide whether you have to pay the fee. By law, the judge may waive the fee only if your income is less than 150 percent of the official poverty line applicable to your family size and you are unable to pay the fee in installments. You may obtain information about the poverty guidelines at [www.uscourts.gov](http://www.uscourts.gov) or in the bankruptcy clerk's office.

**Required information.** Complete all items in the application, and attach requested schedules. Then sign the application on the last page. If you and your spouse are filing a joint bankruptcy petition, you both must provide information as requested and sign the application.

In re: \_\_\_\_\_ Case No. \_\_\_\_\_  
Debtor(s) (if known)

**APPLICATION FOR WAIVER OF THE CHAPTER 7 FILING FEE FOR INDIVIDUALS WHO CANNOT PAY THE FILING FEE IN FULL OR IN INSTALLMENTS**

**Part A. Family Size and Income**

1. Including yourself, your spouse, and dependents you have listed or will list on Schedule I (Current Income of Individual Debtors(s)), how many people are in your family? (Do not include your spouse if you are separated AND are not filing a joint petition.) \_\_\_\_\_

2. Restate the following information that you provided, or will provide, on Line 16 of Schedule I. Attach a completed copy of Schedule I, if it is available. Total Combined Monthly Income (Line 16 of Schedule I): \$ \_\_\_\_\_

3. State the monthly net income, if any, of dependents included in Question 1 above. Do not include any income already reported in Item 2. If none, enter \$0. \$ \_\_\_\_\_

4. Add the "Total Combined Monthly Income" reported in Question 2 to your dependents' monthly net income from Question 3. \$ \_\_\_\_\_

5. Do you expect the amount in Question 4 to increase or decrease by more than 10% during the next 6 months? Yes \_\_\_ No \_\_\_

If yes, explain.

**Part B: Monthly Expenses**

6. EITHER (a) attach a completed copy of Schedule J (Schedule of Monthly Expenses), and state your total monthly expenses reported on Line 18 of that Schedule, OR (b) if you have not yet completed Schedule J, provide an estimate of your total monthly expenses. \$ \_\_\_\_\_

7. Do you expect the amount in Question 6 to increase or decrease by more than 10% during the next 6 months? Yes \_\_\_ No \_\_\_

If yes, explain.

**Part C. Real and Personal Property**

EITHER (1) attach completed copies of Schedules A (Real Property) and Schedule B (Personal Property), OR (2) if you have not yet completed those schedules, answer the following questions.

8. State the amount of cash you have on hand: \$ \_\_\_\_\_

9. State below any money you have in savings, checking, or other accounts in a bank or other financial institution.

Bank or Other Financial Institution:

Type of Account such as savings, checking, CD:

Amount:

\_\_\_\_\_  
\_\_\_\_\_ \$ \_\_\_\_\_  
\_\_\_\_\_ \$ \_\_\_\_\_

10. State below the assets owned by you. **Do not list ordinary household furnishings and clothing.**

Home Address:

\_\_\_\_\_  
\_\_\_\_\_

Value: \$ \_\_\_\_\_

Amount owed on mortgages and liens: \$ \_\_\_\_\_

Other real estate

Address:

\_\_\_\_\_  
\_\_\_\_\_

Value: \$ \_\_\_\_\_

Amount owed on mortgages and liens: \$ \_\_\_\_\_

Motor vehicle Model/Year: \_\_\_\_\_

\_\_\_\_\_  
Value: \$ \_\_\_\_\_

Amount owed: \$ \_\_\_\_\_

Motor vehicle Model/Year: \_\_\_\_\_

\_\_\_\_\_  
Value: \$ \_\_\_\_\_

Amount owed: \$ \_\_\_\_\_

Other Description \_\_\_\_\_

\_\_\_\_\_  
Value: \$ \_\_\_\_\_

Amount owed: \$ \_\_\_\_\_

11. State below any person, business, organization, or governmental unit that owes you money and the amount that is owed.

Name of Person, Business, or Organization that Owes You Money

Amount Owed

\_\_\_\_\_ \$ \_\_\_\_\_  
\_\_\_\_\_ \$ \_\_\_\_\_

**Part D. Additional Information.**

12. Have you paid an **attorney** any money for services in connection with this case, including the completion of this form, the bankruptcy petition, or schedules? Yes \_\_\_ No \_\_\_

If yes, how much have you paid? \$ \_\_\_\_\_

13. Have you promised to pay or do you anticipate paying an **attorney** in connection with your bankruptcy case? Yes \_\_\_ No \_\_\_

If yes, how much have you promised to pay or do you anticipate paying? \$ \_\_\_\_\_

14. Have you paid **anyone other than an attorney** (such as a bankruptcy petition preparer, paralegal, typing service, or another person) any money for services in connection with this case, including the completion of this form, the bankruptcy petition, or schedules? Yes \_\_\_ No \_\_\_

If yes, how much have you paid? \$ \_\_\_\_\_

15. Have you promised to pay or do you anticipate paying **anyone other than an attorney** (such as a bankruptcy petition preparer, paralegal, typing service, or another person) any money for services in connection with this case, including the completion of this form, the bankruptcy petition, or schedules?

Yes \_\_\_ No \_\_\_

If yes, how much have you promised to pay or do you anticipate paying? \$ \_\_\_\_\_

16. Has anyone paid an attorney or other person or service in connection with this case, on your behalf? Yes \_\_\_ No \_\_\_

If yes, explain.

17. Have you previously filed for bankruptcy relief during the past eight years? Yes \_\_\_ No \_\_\_  
Case Number (if known)

Year filed Location of filing Did you obtain a discharge? (if known)

\_\_\_\_\_ Yes \_\_\_ No \_\_\_ Don't know \_\_\_  
\_\_\_\_\_ Yes \_\_\_ No \_\_\_ Don't know \_\_\_

18. Please provide any other information that helps to explain why you are unable to pay the filing fee in installments.

19. I (we) declare under penalty of perjury that I (we) cannot currently afford to pay the filing fee in full or in installments and that the foregoing information is true and correct.

Executed on: \_\_\_\_\_

Date Signature of Debtor \_\_\_\_\_

\_\_\_\_\_  
Date Signature of Co-debtor

**DECLARATION AND SIGNATURE OF BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)**

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required under that section.

\_\_\_\_\_  
Printed or Typed Name and Title, if any, of Bankruptcy Petition Preparer Social Security No. (Required by 11 U.S.C. § 110.) *If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social security number of the officer, principal, responsible person, or partner who signs the document.*

\_\_\_\_\_  
Address

x

\_\_\_\_\_  
Signature of Bankruptcy Petition Preparer

\_\_\_\_\_  
Date

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document, unless the bankruptcy petition preparer is not an individual:

*If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person. A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.*

Form B3B

United State Bankruptcy Court

\_\_\_\_\_ District of \_\_\_\_\_

In re: \_\_\_\_\_

Debtor(s)

Case No. \_\_\_\_\_

**ORDER ON DEBTOR'S APPLICATION FOR WAIVER OF THE CHAPTER 7 FILING FEE**

Upon consideration of the debtor's "Application for Waiver of the Chapter 7 Filing Fee," the court orders that the application be:

[ ] GRANTED.

This order is subject to being vacated at a later time if developments in the administration of the bankruptcy case demonstrate that the waiver was unwarranted.

[ ] DENIED.

The debtor shall pay the chapter 7 filing fee according to the following terms:

\$ \_\_\_\_\_ on or before \_\_\_\_\_  
\$ \_\_\_\_\_ on or before \_\_\_\_\_  
\$ \_\_\_\_\_ on or before \_\_\_\_\_  
\$ \_\_\_\_\_ on or before \_\_\_\_\_

Until the filing fee is paid in full, the debtor shall not make any additional payment or transfer any additional property to an attorney or any other person for services in connection with this case.

IF THE DEBTOR FAILS TO TIMELY PAY THE FILING FEE IN FULL OR TO TIMELY MAKE INSTALLMENT PAYMENTS, THE COURT MAY DISMISS THE DEBTOR'S CHAPTER 7 CASE.

[ ] SCHEDULED FOR HEARING.

A hearing to consider the debtor's "Application for Waiver of the Chapter 7 Filing Fee" shall be held on \_\_\_\_\_ at \_\_\_\_\_ am/pm at

\_\_\_\_\_.(address of courthouse)

IF THE DEBTOR FAILS TO APPEAR AT THE SCHEDULED HEARING, THE COURT MAY DEEM SUCH FAILURE TO BE THE DEBTOR'S CONSENT TO THE ENTRY OF AN ORDER DENYING THE FEE WAIVER APPLICATION BY DEFAULT.

BY THE COURT:

DATE: \_\_\_\_\_

United States Bankruptcy Judge

**EXHIBIT 7**  
**Form 3A: Application And Order to Pay Filing Fee in Installments**

**United States Bankruptcy Court**

\_\_\_\_\_ District Of \_\_\_\_\_  
In re \_\_\_\_\_, Case No. \_\_\_\_\_  
Debtor  
Chapter \_\_\_\_\_

**APPLICATION TO PAY FILING FEE IN INSTALLMENTS**

1. In accordance with Fed. R. Bankr. P. 1006, I apply for permission to pay the filing fee amounting to \$ \_\_\_\_\_ in installments.
  2. I am unable to pay the filing fee except in installments.
  3. Until the filing fee is paid in full, I will not make any additional payment or transfer any additional property to an attorney or any other person for services in connection with this case.
  4. I propose the following terms for the payment of the Filing Fee.\*  
\$ \_\_\_\_\_ Check one With the filing of the petition, or  
On or before \_\_\_\_\_  
\$ \_\_\_\_\_ on or before \_\_\_\_\_  
\$ \_\_\_\_\_ on or before \_\_\_\_\_  
\$ \_\_\_\_\_ on or before \_\_\_\_\_
- \* The number of installments proposed shall not exceed four (4), and the final installment shall be payable not later than 120 days after filing the petition. For cause shown, the court may extend the time of any installment, provided the last installment is paid not later than 180 days after filing the petition. Fed. R. Bankr. P. 1006(b)(2).
5. I understand that if I fail to pay any installment when due, my bankruptcy case may be dismissed and I may not receive a discharge of my debts.

\_\_\_\_\_  
Signature of Attorney Date Signature of Debtor Date  
(In a joint case, both spouses must sign.)

\_\_\_\_\_  
Name of Attorney  
Signature of Joint Debtor (if any) Date

**DECLARATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)**

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required under that section; and (4) I will not accept any additional money or other property from the debtor before the filing fee is paid in full.

\_\_\_\_\_  
Printed or Typed Name and Title, if any, of Bankruptcy Petition Preparer Social Security No. (Required by 11 U.S.C. § 110.)  
*If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social security number of the officer, principal, responsible person, or partner who signs the document.*

\_\_\_\_\_  
Address

x

\_\_\_\_\_  
Signature of Bankruptcy Petition Preparer Date

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document, unless the bankruptcy petition preparer is not an individual:



*If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person. A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.*

## United States Bankruptcy Court

\_\_\_\_\_ District Of \_\_\_\_\_

In re \_\_\_\_\_, Case No. \_\_\_\_\_

Debtor

Chapter \_\_\_\_\_

### **ORDER APPROVING PAYMENT OF FILING FEE IN INSTALLMENTS**

IT IS ORDERED that the debtor(s) may pay the filing fee in installments on the terms proposed in the foregoing application.

IT IS ORDERED that the debtor(s) shall pay the filing fee according to the following terms:

\$ \_\_\_\_\_ with the filing of the petition, or on or before \_\_\_\_\_  
\$ \_\_\_\_\_ on or before \_\_\_\_\_  
\$ \_\_\_\_\_ on or before \_\_\_\_\_  
\$ \_\_\_\_\_ on or before \_\_\_\_\_

IT IS FURTHER ORDERED that until the filing fee is paid in full the debtor(s) shall not make any additional payment or transfer any additional property to an attorney or any other person for services in connection with this case.

BY THE COURT

Date: \_\_\_\_\_

*United States Bankruptcy Judge*

### EXHIBIT 8

#### **Percentage Allocation<sup>305</sup> of Chapter 7 Fees Due at Filing**

Chart #1 shows the filing fee and other fees required to file a chapter 7 case after 10/17/05, and the distribution of those fees among the fund accounts. Bankruptcy Rule 1017(b)(2) requires the clerk to distribute all fees collected upon filing among all funds *pro-rata*.

<b>Chart #1</b>	<b>Total</b>	<b>6855TT</b>	<b>086400</b>	<b>086900</b>	<b>5073XX</b>	<b>510000</b>
1- 1930(a)(1)	\$245	\$45	\$25	\$22.48	\$89.01	\$63.51
2- 1930(b)Item 8	39	0	0	0	0	39.00
3- 1930(b)Item 9	15	15	0	0	0	0
4- Total Fees Due to Pro-Rate	\$299	\$60	\$25	\$22.48	\$89.01	\$102.51
5-Percentage allocation	100%	20.06690%	8.36120%	7.51839%	29.76923%	34.28428%

### EXAMPLE

Assume, for example, the court approves four equal installments of \$50.00, but the debtor defaults after making only two payments.<sup>306</sup>

Chart #2 shows the proration of an installment payment among the funds. The full \$50.00 received from the first and second installments are prorated among each fund as follows:

**Chart #2**

	<b>Total 100%</b>	<b>6855TT 20.06690%</b>	<b>086400 8.36120%</b>	<b>086900 7.51839%</b>	<b>5073XX 29.76923%</b>	<b>510000 34.28428%</b>
1 <sup>ST</sup> PAYMENT Less: trustee surcharge Balance to pro rate	\$50.00	\$10.04	\$4.18	\$3.76	\$14.88	\$17.14
2 <sup>ND</sup> PAYMENT	\$50.00	\$10.04	\$4.18	\$3.76	\$14.88	\$17.14
3 <sup>rd</sup> PAYMENT	-0-	-0-	-0-	-0-	-0-	-0-
4 <sup>th</sup> PAYMENT	-0-	-0-	-0-	-0-	-0-	-0-
Total Prorated	\$100.00	\$20.08	\$8.36	\$7.52	\$29.76	\$34.28
Total Still Due	\$199.00	\$39.92	\$16.64	\$14.96	\$59.25	\$68.23

<sup>305</sup>These percentages reflect the FINSYS computation. Because FINSYS carries the computation to a fraction of a penny, it can not round up to the nearest penny. To enable these tables to foot and crossfoot, these figures are adjusted to round up to the nearest penny when appropriate.

<sup>306</sup>Bankruptcy Rule 1006(b)(2) limits the number of installments to no more than four to be paid within 120 days, which may be extended to 180 days for cause. Bankruptcy Rule 1017(b)(2) requires the clerk to distribute all funds collected *pro rata*.

**EXHIBIT 9**  
**Search Fee Guidelines for Bankruptcy Courts**  
[Effective January 1, 1998]

Introduction

The issue of the imposition of the search fee involves an interplay between two different concerns: one, the duty of a clerk's office to provide access to the court's records, and two, the efficient use of the limited resources available in any clerk's office. These guidelines attempt to strike a fair balance between these two competing concerns. In addition, the guidelines are intended to increase consistency of the application of the search fee among courts.

However, the guidelines are meant to inform the clerk's discretion, not to limit it. Thus, the guidelines are not meant to be hard-and-fast rules on the application of the search fee; rather, they are meant to be parameters within which the operations of each individual clerk's office can be adapted.

**Guideline No. 1**

Any information which is easily retrieved, with a minimum expenditure of time and effort, should be considered a non-chargeable "retrieval," as opposed to a chargeable search. A search fee should not be charged for a single request for basic information readily retrievable through an automated database. A request of this nature should be considered a "retrieval" and should not be considered a "search."

The advent of BANCAP, NIBS, PACER, and VCIS has greatly diminished the resource strain on a clerk's office when retrieving basic information about a case. Basic information is defined as any information which is easily retrievable from an automated database. Although this information will vary according to which system is being utilized by a particular court, basic information which may be retrieved without a search fee may include: (1) whether a particular debtor has filed a bankruptcy petition and the date of filing (when exact name of debtor is provided by requestor); (2) name of debtor (when case number is provided); (3) the debtor's social security number; (4) whether the case is voluntary or involuntary; (5) what chapter a case was originally filed under; (6) the name of the debtor's attorney; (7) the name of the trustee; (8) whether there are assets or no assets; (9) the date of the Section 341 meeting; and (10) the status of the case generally (i.e., open or closed).

The public should be encouraged to come to the court to conduct searches for information, and to utilize all available automated databases.

**Guideline No. 2**

A search fee should be charged for any request for which accurate case and docket number information is not provided by the requestor and which therefore requires a physical search of the court's records.

A request for information where documents or pleadings are not identified by accurate and complete case and docket number and which therefore requires a physical search of the court's records (whether automated or hard copy) will be considered a "search" which is properly chargeable.

**Guideline No. 3**

With limited exceptions, a fee should be charged for all written search requests which require a written response.

A written request is defined as any search request made in writing which requires a written response. Because of the time and resources which must be expended in order to respond to a written request, such a request shall be considered a search which is subject to the fee, even if the request is for basic information which may be obtained from an automated database or from the docket sheet. One exception to this guideline applies to courts which require all search requests to be in writing; in such courts, no search fee should be charged for requests for retrievals of "basic" information, as defined in Guideline No. 1, above. An additional exception is the situation where a written request for "basic" information (as defined above), can be responded to by having the clerk's office staff provide a handwritten response on the requestor's letter (as opposed to requiring a separate document in response) and where the requestor has provided a self-addressed, stamped return envelope. In this situation, the time and effort involved do not warrant the imposition of the search fee.

For tracking and accounting purposes, it is recommended that the court not process a written request until the search fee has been received (subject to the limited exception set forth above).

**Guideline No. 4**

Where requested information is available on VCIS, PACER, or another automated system, a court may have a policy which requires a telephoning requestor to utilize an automated database (VCIS for most individuals and PACER for law firms and other institutions with computer capability), instead of having a court employee conduct the information retrieval.

Much basic information which is sought may be retrievable by a requestor through an automated system without the need for any direct communication with a court employee. In order to maximize the utility of these automated databases and minimize the expenditure of court personnel time, a court may require requestors to use these services where available.

#### **Guideline No. 5**

In automated courts, a computer terminal with suitable data protection should be made available for use by the public.

Those offices with computer terminals located in a public access area may adopt the policy set forth in Guideline No. 4 for in-person requests for basic information, i.e., a court may require an in-person requestor to utilize its public access terminal rather than having a court employee retrieve the information.

#### **Guideline No. 6**

Case trustees should be charged the same search fees as all other private individuals or entities.

The Bankruptcy Court Miscellaneous Fee Schedule provides only two stated exceptions from fees, one for the "United States" (i.e., federal agencies) and the other for bankruptcy administrators. Thus, there is no authority for a waiver of fees for case trustees.

Some courts have been expanding upon the exception set forth in Item 6 of the Fee Schedule (filing fees for adversary complaints) and only charging search fees to the case trustee to the extent there is an estate realized. There is no basis for this expansion. Case trustees should be charged the same search fees as other individuals.

#### **Guideline No. 7**

Requests for archived documents should be charged only the archive retrieval fee of \$45.00 and not an additional \$26.00 search fee.

Item 13 of the Fee Schedule provides that a \$45.00 fee shall be charged for retrieval of a record from any place that such record may be archived. The Fee Schedule does not refer to any additional fee for such retrieval, and it does not appear that the drafters contemplated two separate fees (one for the request and one for the retrieval) to be charged when a particular document is off-site.

However, the search fee may be charged to an individual who makes a request to the clerk's office for box, location, and accession information of a document in order to conduct his or her own search of the Records Center. In such a case, a physical search of the court's records would be necessary in order to obtain the information, and a search fee would be appropriate. In order to reduce the time involved in responding to these types of requests, and also to make this information more accessible to the public, it is suggested that courts either automate this information or make a duplicate accession number book available to the public.

#### **Guideline No. 8**

The clerk has the general authority to refuse to conduct searches which are unreasonable or unduly burdensome.

The clerk of court has the responsibility of being responsive to parties in interest in cases pending in the court. However, this does not mean that either the public or government agencies have an unfettered right to make unreasonable or unduly burdensome demands upon the resources and personnel of a clerk's office. The clerk may (and should) refuse to conduct searches which would require a disproportionate expenditure of time and/or resources, and should encourage entities making such requests to conduct their own search of court records. This includes requests for information which, instead of comprising a single request, include a list of numerous names or items to be searched. Such requestors should be encouraged to utilize automated databases to obtain the desired information.

This procedure applies to federal agencies as well. Although search and copying fees are waived for federal agencies, the clerk is not required to accommodate search or copy requests from such agencies which are unduly burdensome or time-consuming. Because of the volume of requests that often comes from federal agencies, a court may invite or encourage federal agencies (or a local representative), to come into the court to conduct their own searches and should allow them to use court copy facilities.

Another area in which the clerk has unlimited authority to refuse to conduct searches is in connection with requests from credit agencies or other entities for special compilations of information about bankruptcy debtors from the regularly-kept public records of the bankruptcy courts. Although the contents of bankruptcy case files are designated as public records under 11 U.S.C.

§ 107, previously compiled internal dockets or other compilations are not within the scope of section 107. Thus, the clerk is under no obligation to release such internal compilations.

**EXHIBIT 10**  
**Appearance of Child Support Creditor or Representative (Form B281)**

B 281  
(12/94)

**UNITED STATES BANKRUPTCY COURT**  
**OF**

**In re**

Bankruptcy Case No. \_\_\_\_\_

**Debtor**

Address: \_\_\_\_\_

Chapter \_\_\_\_\_

Social Security No(s): \_\_\_\_\_

Employer's Tax Identification No(s). [if any]: \_\_\_\_\_

**APPEARANCE OF CHILD SUPPORT CREDITOR\***  
**OR REPRESENTATIVE**

I certify under penalty of perjury that I am a child support creditor\* of the above-named debtor, or the authorized representative of such child support creditor, with respect to the child support obligation which is set out below.

Name: \_\_\_\_\_

Organization: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

[THIS PAGE IS BLANK]

\_\_\_\_\_  
Date

\_\_\_\_\_  
Child Support Creditor\* or Authorized Representative

**Summary of Child Support Obligation**

Amount in arrears:

\$ \_\_\_\_\_

If Child Support has been assigned:

Amount of Support which is owed  
under assignments:

Amount currently due per week or per month:  
on a continuing basis:

\$ \_\_\_\_\_  
(per week) (per month)

\$ \_\_\_\_\_

Amount owed primary child support  
creditor (balance not assigned):

\$ \_\_\_\_\_

**Attach an itemized statement of account**

\* Child support creditor includes both creditor to whom the debtor has a primary obligation to pay child support as well as any entity to whom such support has been assigned, if pursuant to Section 402(a)(26) of the Social Security Act or if such debt has been assigned to the Federal Government or to any State or political subdivision of a State.

## EXHIBIT 11

### Chapter X. ADMINISTRATIVE FEES AND SERVICES.

#### Part C. Utilization of Resources Outside the Judiciary.

#### CONTENTS

1. Judicial Conference Noticing Guidelines
2. Judicial Conference Guidelines Implementing 28 U.S.C. § 156(c)

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#### 1. Judicial Conference Noticing Guidelines.

Federal Rules of Bankruptcy Procedure 2002(a), (b), (d), (f), and (o) permit the court to direct a person other than the clerk to prepare and mail the notices enumerated in those rules. In addition, beginning in fiscal year 1986, the annual appropriations legislation for the judiciary has contained a provision directing the Administrative Office and the courts to permit and encourage the preparation and mailing of notices in bankruptcy cases by persons other than bankruptcy clerks. In March 1986, the Judicial Conference approved guidelines implementing this statutory directive. The guidelines were amended in March 1990 to conform them to changes in the Bankruptcy Court Miscellaneous Fee Schedule.

Exhibit 12 is the Judicial Conference Noticing Guidelines.

#### 2. Judicial Conference Guidelines Implementing 28 U.S.C. § 156(c).

Section 156(c) of title 28 authorizes bankruptcy courts to use other than court facilities or services to provide notices, dockets, calendars, and other administrative information to parties in bankruptcy cases when the costs of such facilities or services are paid for from assets of the estate. The statute further provides that the use of such facilities or services shall be subject to any conditions and limitations which the pertinent judicial council of the circuit may prescribe. The Judicial Conference, at its March 1989 session, approved guidelines for the use of outside facilities or services for consideration by the judicial councils.

Exhibit 13 is the Judicial Conference Guidelines Implementing 28 U.S.C. § 156(c).

**EXHIBIT 12**  
**"JUDICIAL CONFERENCE OF THE UNITED STATES"**

**GUIDELINES ON NOTICING**

1. Purpose. The Bankruptcy Code and Rules afford bankruptcy judges considerable discretion in the allocation of responsibility for providing notice of events in the course of bankruptcy proceedings. Moreover, only limited appropriations and personnel are available to process bankruptcy petitions. The judiciary's current appropriation act encourages the courts to place the burden and expense of noticing on the litigants rather than the taxpayers, and 28 U.S.C. § 156 encourages the courts to explore alternative procedures for furnishing information on the courts' dockets. These guidelines are designed to provide advice for the exercise of the courts' discretion under the Bankruptcy Code and Rules.
2. Generally. Litigants involved in bankruptcy petitions and proceedings should be on a financial footing similar to that of other litigants in the district courts. Parties are generally expected to bear their own costs of litigation, including the costs associated with serving other parties with summonses and copies of pleadings and motions. Conversely, the clerk's office is generally responsible for ensuring that notices have been provided and for providing notice of court-initiated events, such as hearing and trial dates and entry of orders and judgments. The courts should provide for review of the particular circumstances involved in individual situations.
3. Combining Notices. Bankruptcy proceedings generally have more individuals involved as parties who must be notified of hearings and motions than many other civil actions in the district courts. Accordingly, every effort should be made to reduce the clerical work and mailing expenses involved in providing notice by combining notices of different events into a single notice whenever feasible. In addition, many parties routinely receive notices in many cases; and every effort should be made to include notices of several different cases in the same mailing to such parties.
4. "No Asset" Cases. A litigant is not generally denied access to federal courts where indigence precludes payment of certain expenses of litigation. In bankruptcy proceedings a debtor with insufficient assets to pay any of the costs of administration - or only enough assets to pay part of such costs - may well not be able to bear the burden of noticing and should be given appropriate consideration.
5. Fee for Noticing by Clerks. For all notices generated in cases filed under title 11 of the United States Code, 50 cents each. Notices dated prior to January 1, 1987, should be charged at the rate of 25 cents for each notice in excess of fifty notices per set. Notice fees are payable only from the estate and only to the extent there is an estate.(\*\* See Note Below.)
6. Statutory Limitations. Certain provisions of the Bankruptcy Code and Rules limit the judge's discretion to determine who will provide notice by specifying that particular notices will be provided by particular individuals.
  - a. Clerk. Under 11 U.S.C. §§ 743 and 762 the clerk must give notice to the Securities and Exchange Commission and the Security Investor Protection Corporation of stockbroker liquidation petitions and to the Commodity Futures Trading Commission of commodity broker liquidation petitions. Where a claim has been transferred and either the transferor or transferee files a proof of claim, the clerk must immediately notify the other of the right to join in the claim under Bankruptcy Rule 3001(e)(3).
  - b. Trustee. Under Bankruptcy Rule 2015, a trustee (or debtor in possession) shall give notice of the petition to every person holding money or property of the debtor who has not already been notified of the petition. Under Bankruptcy Rule 6007, a trustee (or debtor in possession) must furnish whatever notice is given of a proposed abandonment or disposition of property, unless otherwise directed by the court.
  - c. Debtor. The debtor is required to give notice of any amendment to a voluntary petition, list, schedule, or statement to the trustee and to any person affected by the amendment, under Bankruptcy Rule 1009.
7. Specific Factors. In a particular case the court should consider the following specific factors in allocating the burden for providing notices:
  - a. The financial ability of the moving party (estate or creditor) to bear the burden.
  - b. The convenience of including notices with other mailings (such as distribution checks), thus reducing total costs.
  - c. Pick-up boxes should be established for persons, such as trustees, U.S. attorneys, etc., who can conveniently pick up notices at the clerk's office on a regular basis rather than mailing notices to such persons.
  - d. The relative technical and administrative capabilities for providing notices on a timely basis - particularly when unusually large numbers of creditors are involved - including the availability of automated data-processing in the clerk's office.



- e. The availability of reliable commercial services to assist in providing notices. [Note that the court must exercise care in avoiding even the appearance of favoritism and should not direct litigants to one service to the exclusion or detriment of other available services.]
  - f. Any particular circumstances or management concerns in the proceeding that indicate a need to have notices provided by the clerk's office directly.
  - g. The chapter of the Bankruptcy Code and the anticipated number of separate notices to be provided.
8. Certificate. The court or clerk should approve the form and content of any notice not provided by the clerk's office and should receive from the person providing notice a certificate of service that includes a copy of the notice and a list of persons to whom it was mailed.
9. Postage. Ordinarily postage expenses will be borne by the person providing notice which may be reimbursed as a court approved cost of administration. However, in a particular case it may be appropriate to impose on the estate or a litigant only the physical burden of preparing notices while actually mailing the notices through the Clerk's office using official (penalty-mail) envelopes. Clerk's, however, may not provide parties or litigants with penalty-mail envelopes for their use. In those limited instances where the court directs that noticing be performed by someone other than the clerk in no asset cases, reimbursement for postage may be claimed in accordance with provisions established by the Administrative Office of the United States Courts.
10. Assistance. The Administrative Office should be consulted for assistance in unusual circumstances, such as the filing of an exceptionally large petition with massive noticing requirements where insufficient assets are available to bear the cost of providing notices. Where the court itself is interested in using commercial services for providing notices, the Administrative Office should be consulted as to applicable procurement and contracting considerations and procedures.

\*\* The noticing fee was changed effective December 1, 1992 to incorporate an administrative fee in chapter 7 and chapter 13 cases filed on or after December 1, 1992. See B.4.B.(8) of this chapter.

**EXHIBIT 13**  
**GUIDELINES ON USE OF OUTSIDE FACILITIES AND SERVICES**

GENERALLY

1. Authority. Section 156(c) of title 28 authorizes bankruptcy courts to use outside facilities or services to provide notices, dockets, calendars, and other administrative information to parties in bankruptcy cases where the cost of such facilities or services are paid for out of the assets of the estate and are not charged to the United States. The statute provides that the use of such facilities and services is subject to any conditions and limitations imposed by the pertinent circuit council.

Comments: Section 156(c) was enacted in recognition that the day-to-day activities and administrative requirements in some large bankruptcy cases are too onerous to be performed efficiently by the bankruptcy clerk's office. Services such as noticing, providing copies of case papers, and processing proofs of claims and interest can sometimes be performed more efficiently outside the bankruptcy clerk's office. The statute authorizes the bankruptcy court to permit third parties to perform these services at the estate's expense.

The need for such outside services is most prevalent in so-called "mega cases," which are extremely large bankruptcy cases with hundreds or thousands of creditors. The staffing levels of bankruptcy clerks' offices sometimes cannot absorb such dramatic increases in workloads.

2. Custodian. Pursuant to 28 U.S.C. § 156(e), the bankruptcy clerk of court is the official custodian of the records and dockets of the bankruptcy court. As custodian of the records and dockets of the bankruptcy court, the bankruptcy clerk is responsible for the security and integrity of all the bankruptcy court's records and dockets, including those maintained by the debtor or a third party.

Comments: The bankruptcy clerk is responsible for the security and integrity of all the bankruptcy court's records and dockets, including dockets, claims registers, mailing matrices, and other case papers maintained by the debtor or a third party.

How the bankruptcy clerk assures the security and integrity of the records and dockets depends on the procedures utilized in a particular case.

If the estate has hired personnel to work in the bankruptcy clerk's office, the bankruptcy clerk should supervise their work. If the debtor or a third party maintains claims registers, mailing matrices, or other case papers outside the bankruptcy clerk's office, the bankruptcy clerk should institute a system to monitor and check their work.

The bankruptcy clerk should institute safeguards to be included in the procedures used by others.

For example, if the debtor or a third party is to process proofs of claims and produce the claims register, they may be required to issue an acknowledgment when a proof of claim is filed. The notice of the meeting of creditors could state that acknowledgments are to be issued for proofs of claims and that if a creditor does not receive one within a week after filing a proof of claim, the creditor should contact the bankruptcy clerk.

Another example of a safeguard would be to require that the third party submit updated copies of the claims register or mailing matrix to the bankruptcy court on a weekly basis.

3. Filing. Proofs of claim or interest, complaints, motions, applications, objections, and other case papers shall be filed with the bankruptcy clerk's office which, after noting receipt, upon order of the court, may transmit case papers to an outside entity for maintenance.

Comments: Bankruptcy Rules 3002(b) and 5005(a) require that proofs of claim or interest, complaints, motions, applications, objections, and other case papers be filed with the bankruptcy clerk of court in the district where the case is pending, except as specified by section 1409 of title 28 and except as a judge permits papers to be filed with the judge.

The bankruptcy court should assure itself of the integrity of the procedures before directing that proofs of claim or interest, or other case papers be transmitted to a third party.

If all case papers are filed in the bankruptcy clerk's office and stamped with the date received, the papers can be picked up by the debtor or a third party for processing at another location. The bankruptcy clerk can copy some papers to make spot checks of their processing by the debtor or a third party.

The bankruptcy clerk can obtain a special post office box for the receipt of proofs of claim in "mega cases." This separates the proofs of claims from other mail and speeds processing.

4. Disposition. The bankruptcy clerk remains responsible for the disposition of case papers after the conclusion of a case in which the bankruptcy court has directed the debtor or a third party to maintain the records.

Comments: Although the order which directs the debtor or a third party to maintain records does not necessarily have to provide for their disposition, the bankruptcy clerk should begin planning for records disposition early in the case.

5. Claims. If debtors or third parties are directed to process proofs of claim and maintain the claims register, they should be directed to perform related functions such as recording transfers of claims and giving notices of transfer.

Comments: Bankruptcy Rule 3001(e)(2),(3), and (4) requires notices of certain transfers of claims. The party which processes proofs of claim and maintains the claims register is best able to give the notices. Bankruptcy Rule 3001 requires that the court enter an order on many transfers. The original notices and orders should be placed in the case files.

Bankruptcy Rule 3004 requires notice to the creditor when the debtor or trustee files a claim in the name of the creditor. The party that processes proofs of claim and maintains the claims register is best able to provide the notice.

6. Public records. Section 107 of the Bankruptcy Code provides that the papers filed in bankruptcy cases and the bankruptcy court's dockets are public records unless the bankruptcy court orders otherwise. Case papers such as proofs of claim remain public records even if the debtor or a third party is directed to process and maintain those records. The bankruptcy clerk should ensure that those records are open to examination at reasonable times without charge.

Comments: Case papers processed and maintained by the debtor or a third party at a location outside the bankruptcy clerk's office should be available for review at that location during normal business hours.

Because it may often be impractical for parties to review case papers where the papers are processed and maintained, the bankruptcy clerk should attempt to make as much information available as is possible.

As an example, if a third party or the debtor processes proofs of claim and interest and generates the claims register, the third party or the debtor should furnish copies of the updated claims register to the bankruptcy court at least weekly.

7. Waivers. Personnel employed by the estate to assist the bankruptcy clerk's office are not government employees. They should not be administered oaths of office although they may be asked to sign a waiver of any right to compensation by the government. Because such personnel are not government employees, the bankruptcy clerk may not fire them.

Comments: There is no need to administer an oath of office to personnel paid by the estate to assist the bankruptcy clerk's office in processing a case. Administering an oath to such personnel fosters the false impression that they are government employees.

Administering an oath to a new government employee impresses the employee with the obligations of office and triggers certain restrictions on the employee's activities. A written waiver including a statement of the obligations of personnel employed by the estate to assist the bankruptcy clerk's office is less suggestive of government employment.

The bankruptcy clerk should request that special employees sign a written waiver of any right to receive compensation from the government, civil service retirement credit, or other benefits of government employment. The waiver should also include an acknowledgment that the special employee is to be paid by the estate, is directly accountable to the bankruptcy clerk, and will not receive instructions, directions, or orders from the debtor or the trustee.

The waiver should also specify that the special employees will refrain from discussing pending or impending cases, will not disclose confidential information received during the course of their employment, and will not profit from such confidential information. These obligations are included in the code of conduct for clerks, which requires that the clerks impose these specific obligations on their staffs.

8. Supervision. The bankruptcy clerk is responsible for supervising the work of personnel employed by the estate to assist the bankruptcy clerk's office.

Comments: The bankruptcy clerk of court may select personnel to be employed by the estate to work in the bankruptcy clerk's office pursuant to section 156(c). If authorized by the order directing the estate to employ the personnel, the bankruptcy clerk may specify the terms of their employment. Due to the nature of such special employees' work, the bankruptcy clerk or a designated deputy clerk should supervise their work.

For the ease of supervision, it is desirable that the special employees work in the bankruptcy clerk's office if sufficient space is available. This also makes it easier to maintain security for the case papers processed by the special employees.

9. Favoritism. Personnel employed by the estate to assist the bankruptcy clerk's office may not provide special services for the debtor or the trustee. The bankruptcy clerk should strive to avoid any appearance that these personnel favor the debtor or any other party while performing official duties.

Comments: While they are assisting the bankruptcy clerk's office, special employees should not be in contact with the debtor, except on official business or to receive their paychecks. They should not receive instructions, directions, or orders from the debtor or the trustee.

The bankruptcy clerk should strive to avoid any impression that the special employees favor the debtor or any other party in their work for the bankruptcy clerk's office. For this reason, the special employees should not work in the debtor's business and assist the bankruptcy clerk's office at the same time. It is desirable that the special employees not be former employees of the debtor.

### FACILITIES

10. Equipment. Any equipment, furniture, or other facilities leased or purchased at the estate's expense for the court's use in a bankruptcy case is property of the estate and will be returned to the estate after its use by the bankruptcy court.

Comments: Because section 156(c) prohibits charging the cost of such equipment, furniture, or other facilities to the United States, the bankruptcy clerk should explain to the seller or lessor that the estate - - not the bankruptcy court -- is responsible for payment.

### SERVICES

11. Copies. If the bankruptcy clerk selects a commercial copy service to provide copies of papers in one or more cases, the bankruptcy clerk must exercise care to avoid the appearance of favoritism in the selection. The bankruptcy clerk should request written proposals for the work as part of the clerk's determination of which commercial copy service is best qualified to provide such a service. If the cost of the copies is expected to total more than \$25,000, the bankruptcy clerk should make a formal solicitation of written proposals for the work. If a very large case is filed without advance notice, the bankruptcy clerk may not have time to solicit formal written proposals for the copy services. In such an instance, the clerk may solicit proposals orally and document the solicitation and responses.

Comments: The bankruptcy clerk's office may not be able to efficiently handle the volume of copy requests in a "mega case." With planning and the bankruptcy clerk's assistance, a private copy service may be able to provide copies of case papers at a lower price than the bankruptcy clerk's office. This saves time for the bankruptcy clerk's office and saves money for the parties. The time savings is particularly important in "mega cases," in which copy requests could otherwise require much of the bankruptcy clerk's office's time.

The bankruptcy clerk must exercise care to avoid the appearance of favoritism in the selection of a copy service to provide copies in a "mega case." The bankruptcy clerk should make at least an informal survey to determine which copy service is best qualified to provide copies on the basis of reliability, price per copy, and additional services to be provided such as maintaining a duplicate file for review by the public.

Advertising is required for most government purchases of more than \$25,000 by 41 U.S.C. § 5. Although the bankruptcy court's designation of a copy service is not a government purchase of services, it does convey a valuable business opportunity.

Basic fairness requires that all qualified copy centers be allowed to submit proposals if the bankruptcy clerk anticipates that more than \$25,000 worth of copies will be requested in a year. If time permits, the bankruptcy clerk should send written requests for proposals to each of the local copy services which are capable of performing the work in a timely manner. If time permits and the bankruptcy clerk anticipates that more than \$25,000 worth of copies will be requested in a year, copies of all of the written proposals should be sent for review to the Contracts Branch of the Contracts and Services Division of the Administrative Office before a particular proposal is selected.

Proposals for making copies should be solicited on a contingent basis before a "mega case" is filed. If it has not been done, the request for proposals can be conveyed orally or hand-delivered with instructions that they be returned within 48-hours.

The order designating the copy service can also require that the parties file an extra copy of all case papers except proofs of claim. The intake and docket clerks can process the copies along with the originals and the copy service can pick up the copies and an updated docket sheet once a day. The parties can then order copies by docket numbers or can place standing orders for copies.

The request for proposals should require the copy center to maintain a duplicate case file from which copies will be made. The request may also require that the copy center make the duplicate file available for review without charge during normal business hours.

### NOTICES

12. Mailing lists. A debtor in a voluntary case must file a list containing the names and addresses of its creditors, even if the debtor or a third party is ordered to mail all notices in the case. If the debtor or a third party is directed to maintain the mailing matrix in a case, it shall make copies of the matrix available as requested by other parties or the bankruptcy court.

Comments: Bankruptcy Rule 1007(a) requires that debtors in voluntary cases file mailing lists with their petitions unless the petitions are accompanied by schedules of liabilities or chapter 13 statements. Other parties may need to review the list. Another party or the bankruptcy clerk's office may need the list in order to provide a notice.

In certain circumstances the bankruptcy court may permit the debtor to file the mailing list in the form of a computer tape. The bankruptcy clerk shall take steps to insure that the mailing list is maintained properly and that it is protected against loss or damage.

13. Certificate of service. The bankruptcy court or the bankruptcy clerk should approve the form and content of any notice not provided by the bankruptcy clerk's office and should receive from the person providing notice a certificate of service which includes a copy of the notice and a list of persons to whom it was mailed.

Comments: Pursuant to the Bankruptcy Noticing Guidelines adopted by the Judicial Conference in March 1986, the parties shall file certificates of service for the notices which they provide. If counsel for the party signs a certificate of service, the certificate may generally state that notice was given to certain parties (such as the parties on the mailing matrix as of a certain date). If someone else signs the certificate, the certificate shall be accompanied by a list of the names and addresses of the parties served.

To ease the burden of reviewing the form and content of notices not prepared by the bankruptcy clerk's office, the bankruptcy clerk and the bankruptcy court can develop form notices for various circumstances. The bankruptcy court can specify the required contents for certain notices in its local rules.

#### MISCELLANEOUS

14. Assistance. The Bankruptcy Judges Division of the Administrative Office should be consulted when unusual questions or problems arise concerning outside facilities or services.

Comments: "Mega cases" often present unusual questions or problems such as the need to hire additional personnel on an expedited basis or to address unique circumstances in the meeting of creditors notice. The Bankruptcy Judges Division can either answer the questions or refer them to the appropriate office.